



**Texas Department of Housing and Community Affairs
“HOME Program Rule”**

TITLE 10, Part 1, Chapter 53, Texas Administrative Code

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NOTE: This copy of 10 TAC Chapter 53, “State HOME Program Rule” is for reference purposes only. All final determinations are subject to the rule as published on the Texas Secretary of State website at [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=3&ti=10&pt=1](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=3&ti=10&pt=1) Last revised 5/26/2011

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SUBCHAPTER A GENERAL

§53.1. Purpose.

This chapter clarifies the use and administration of all funds provided to the Texas Department of Housing and Community Affairs (Department) by the United States Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 USC §§12701 - 12839) and HUD regulations at 24 CFR, Part 92. All provisions of this chapter apply to any Application received on or after the date of adoption of this chapter by the Department's Board. Existing Contracts executed within the preceding twelve (12) months from the date of adoption of this chapter or current pending Applications may be amended in writing at the request of the Contract Administrator (CA) or Applicant, and with Department approval, to subject the Contract or Application to all provisions of this chapter. Amendments proposing only partial adoption of this chapter are prohibited and no amendment adopting this chapter shall be granted if, in the discretion of the Department, any of the provisions of this chapter conflict with the Notice of Funding Availability under which the existing Contract was awarded or Application was submitted. All CAs with an active Contract may become Reservation System Participants (RSPs), at the written request of the CA without the submission of an Application, and with Department approval, subject to all applicable provisions of this chapter. The State's HOME Program is designed to:

- (1) Focus on the areas with the greatest housing need described in the State Consolidated Plan;
- (2) Provide funds for home ownership and rental housing through acquisition, new construction, rehabilitation, and tenant-based rental assistance;
- (3) Promote partnerships among all levels of government and the private sector, including non-profit and for-profit organizations; and
- (4) Provide low, very low, and extremely low income families with affordable, decent, safe, and sanitary housing.

§53.2. Definitions.

Unless the context clearly indicates otherwise, the following capitalized terms, when used in this chapter, shall have the following meanings ascribed to them; provided that certain capitalized terms used and not defined in this chapter, shall have the meanings ascribed to them in or for purposes of the HOME Final Rule or Chapter 2306 of the Texas Government Code.

- (1) Activity--A single housing unit with a unique physical address. An activity may also refer to an individual Project, Development, or site.
- (2) Administrative Deficiencies--The absence of or lack of clarity in information or documentation as required in this chapter, the applicable NOFA, or in order to meet state or federal requirements in staff's determination. The Department staff may request clarification or

correction of such Administrative Deficiencies during the review of an Application or at any time prior to the end of a Contract and including, but not limited to, review of performance under a Contract, processing of documentation for a Reservation or Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a contract, or resolution of any issues related to compliance.

(A) The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile or electronic transmittal, and a telephone call to the Applicant advising that such a request has been transmitted.

(B) The time period to cure an Administrative Deficiency is reflected under each applicable section of this chapter. The time period begins at the start of the business day following the deficiency notice date.

(C) To cure an Administrative Deficiency, an Applicant or Contract Administrator must provide a clarification, further definition or exposition of an issue, an explanation as to why an Applicant or Contract Administrator has provided certain information or resolution of a discrepancy where an Applicant or Contract Administrator has provided conflicting information.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with any other Person, and specifically shall include parents or subsidiaries. Affiliates also include all General Partners, Special Limited Partners and Principals with an ownership interest.

(4) Affiliated Party--A Person with a contractual relationship with the Contract Administrator on a Contract with the Department.

(5) Applicant--A Person who has submitted to the Department an Application for Department funds or other assistance.

(6) Application--A request for a Contract award or to participate in a reservation system submitted to the Department in a form prescribed by the Department, including any exhibits or other supporting material.

(7) Application Submission Procedures Manual (ASPM)--The manual that sets forth the procedures, forms, and instructions for the completion and submission of an Application to the Department.

(8) Area Median Family Income (AMFI)--The income estimated and determined by HUD as the median family income with adjustments for family size and geographic locations.

(9) Board--The governing board of the Texas Department of Housing and Community Affairs.

(10) CFR--Code of Federal Regulations.

- (11) Chapter 2306--The enabling statute for the Department found in the Texas Government Code.
- (12) Commitment of Funds--Occurs when the Activity or Project is approved by the Department and set up in the disbursement and information system established by HUD.
- (13) Competitive Application Cycle--A defined period of time that Applications may be submitted according to a published Notice of Funding Availability (NOFA) that will include a submission deadline and selection or scoring criteria.
- (14) Contract--The executed written agreement between the Department and a Contract Administrator, Reservation System Participant, or Development Owner, performing an activity related to a program that outlines performance requirements and responsibilities assigned by the document.
- (15) Contract Administrator (CA)--The Person responsible for performing under a Contract with the Department as approved under §53.22 of this chapter.
- (16) Control--The possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership or voting securities, by contract or otherwise, including ownership of more than 50% of the General Partner interest in a limited partnership, or designation as a managing member of a limited liability company or managing General Partner of a limited partnership or any similar member.
- (17) Deobligated Funds--The funds released by a CA or Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a CA or Development Owner.
- (18) Department--The Texas Department of Housing and Community Affairs.
- (19) Developer--Any Person entering into a Contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of such fee, whether by subcontract or otherwise.
- (20) Development--A Project in which an Applicant, CA, or Development Owner has or will have an ownership interest and that has a construction component, either in the form of New Construction or Rehabilitation of multi-unit or single family residential housing.
- (21) Development Owner--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract and is the Person responsible for performing under the Contract with the Department.
- (22) Development Site--The area, or if scattered site, areas for which the Development is proposed to be located.
- (23) General Contractor--A Person who contracts for the construction or Rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires

subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. The prime subcontractors will also be treated as a General Contractor if any of the following are true (in which case, contractor fees will be treated as fees to the General Contractor):

(A) More than 50% of the contract sum in the construction contract is subcontracted to one subcontractor, material supplier, or equipment lessor ("prime subcontractors"); or

(B) More than 75% of the contract sum in the construction contract is subcontracted to three or less subcontractors, material suppliers, and equipment lessors ("prime subcontractors").

(24) General Partner--A Person, or Persons, who is identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.

(25) General Requirements--An allowance for the General Contractor's on-site overhead expenses. General Requirements shall be limited as prescribed in §1.32 of this title (relating to Underwriting Rules and Guidelines) and must follow the standards published by the Construction Specifications Institute.

(26) HOME Final Rule--The regulations with amendments promulgated at 24 CFR, Part 92 as published by HUD for the HOME Investment Partnerships Program at 42 USC §§12701 - 12839.

(27) Housing Contract System (HCS)--The electronic information system established by the Department to be used for tracking, funding, and reporting HOME Contracts and Activities or Projects.

(28) HUD--The United States Department of Housing and Urban Development, or its successor.

(29) IDIS--The electronic grants management information system named the Integrated Disbursement and Information System established by HUD to be used tracking and reporting HOME funding progress.

(30) Land Use Restriction Agreement (LURA)--An agreement between the Department and a Person related to a specific Property or Properties which is filed with the responsible recording authority.

(31) NOFA--Notice of Funding Availability, published in the *Texas Register*.

(32) Open Application Cycle--A defined period of time during which Applications may be submitted according to a published NOFA and which will be reviewed on a first-come, first-

served basis until all funds available are committed, or until the NOFA is closed, whichever is earlier.

(33) Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.

(34) Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs consistent with 42 USC §§12701, et seq. and as provided in the Consolidated Plan and may include any Households composed of one or more persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, elderly, victims of domestic violence, persons with HIV/AIDS, homeless populations, migrant farm workers, and public housing residents.

(35) Predevelopment Costs--Costs related to a specific eligible Project including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, and site control;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees; and

(C) Predevelopment costs do not include general operational or administrative costs.

(36) Principal--A Person, or Persons, that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships, Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) Corporations, Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a ten percent or more interest in the corporation; and

(C) Limited liability companies, Principals include all managing members, members having a ten percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(37) Principal Residence--The primary housing unit a Person or Household inhabits.

(38) Program Activity--The specific purposes for which HOME funds are applied for and used.

(39) Reservation of Funds--Occurs when the Activity or Project is submitted to the Department by a Reservation System Participant.

(40) Reservation System Participant (RSP)--The Person responsible for performing under a Contract with the Department as approved under §53.23 of this chapter.

(41) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application and/or Contract that the CA will serve.

(42) TAC--Texas Administrative Code.

(43) Texas Minimum Construction Standard (TMCS)--The program standard used to determine the minimum acceptable housing condition for the purposes of rehabilitation, new construction, and acquisition.

(44) Third Party--A Person who is not:

(A) An Applicant, CA, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(B) An Affiliate, Affiliated Party to the Applicant, CA, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(C) A Person receiving any portion of the administration, contractor fee, or developer fee.

SUBCHAPTER B AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, AND REVIEW AND AWARD PROCEDURES

§53.20. Availability of Funds.

The Department will make HOME funds available through Notices of Funding Availability (each a NOFA) or the procurement of a contractor. Funds made available under a NOFA may be allocated through Contract awards to Contract Administrators (CAs) or by providing the ability to submit Reservations of Funds for Reservation System Participants (RSPs). Funds subject to regional allocation shall be made available as follows:

- (1) Applicants applying in response to a Competitive Application Cycle will be ranked highest to lowest by subregion. Funding that remains available after awarding all available eligible Applications in each subregion shall collapse and be directed to the next Application in the most underserved subregion. If funding is made available to multiple Program Activities under one NOFA, the funds remaining after awarding all eligible Applications by Program Activity shall collapse and be directed to the next Application in the most underserved subregion regardless of Program Activity;
- (2) Funds made available through an Open Application Cycle and subject to regional allocation shall be made available to each subregion for a time period to be specified in the applicable NOFA, after which the funds remaining shall collapse and be made available statewide; and
- (3) In the event of a tie between two or more Applicants, the Department reserves the right to determine which Application will receive a recommendation for funding, or as otherwise specified in the NOFA. Tied Applicants may also receive a partial recommendation for funding.

§53.21. Application Forms and Materials and Deadlines.

- (a) The Department will develop and publish an Application, which if completed by an eligible Applicant, would satisfy the requirements for requesting funds from the Department. The Department will also issue an ASPM to provide guidance on proper completion of the Application.
- (b) Applicants must submit an Application for a Contract award by the deadline date specified in the NOFA. Applications for participation in a reservation system may be submitted on an ongoing basis throughout the year. All Applications must be received during business hours on any day in which the Department is open for business.

§53.22. Contract Award Application Review Process.

- (a) An Application received by the Department in response to an Open Application Cycle NOFA will be assigned a "Received Date" based on the date it is received by the Division. An Application will be prioritized for review based on its "Received Date." An Application with outstanding Administrative Deficiencies may be held from further review until all Administrative Deficiencies have been cured. Applications that have completed the review process may be presented to the Board for approval with

priority over Applications that continue to have Administrative Deficiencies at the time Board materials are prepared, regardless of "Received Date." If all funds available under a NOFA are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed. Notwithstanding the foregoing, for an Applicant that has also applied under the competitive housing tax credit cycle for the same development, the following shall apply:

(1) The HOME Application shall not lose its "Received Date" priority to applicants that are not requesting housing tax credits unless the development does not receive an award of housing tax credits by July 31st of the year of the cycle (For example: A HOME-only application that is received after the start of the competitive housing tax credit cycle may not be presented to the Board for approval until HOME and housing tax credit layered applications with priority "Received Dates" are presented for approval and the layered application would maintain its "Received Date" priority); and

(2) Applications that have not submitted third party reports due to a later deadline under the housing tax credit program may be held as incomplete Applications until the housing tax credit deadline for submission of third party reports. Such Applications will not be considered complete Applications and shall not be assigned a "Received Date" until the third party reports are received.

(b) For Applications received by the Department in response to a Competitive Application Cycle NOFA, the Department will accept Applications on an ongoing basis during the Application Acceptance Period as specified in the NOFA. Applications will be prioritized for review based upon the score of the Application.

(c) Administrative Deficiencies. An Administrative Deficiency may not be cured if it would require substantially changing an Application or providing any new unrequested information. An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any set-asides, increase the award request amount, or revise the unit mix (both income levels and bedroom mixes), except in response to a direct request from the Department to remedy an Administrative Deficiency as further described in this chapter or by amendment of an Application after the Board approval of a HOME award. The curative time periods allowable for Administrative Deficiencies are: for Applications received under an Open Application Cycle NOFA, Administrative Deficiencies not cured within five (5) business days will be terminated. Applicants that have been terminated may reapply for funds; or for Applications received under a Competitive Application Cycle NOFA, if Administrative Deficiencies are not cured to the satisfaction of the Department within five (5) business days of the deficiency notice date, then five (5) points shall be deducted from the selection score for each additional day the Administrative Deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected within seven (7) business days from the deficiency notice date, then the Application shall be terminated. An Applicant may not adjust the self-score without a request from the Department as a result of an Administrative Deficiency.

§53.23. Reservation System Participant Review Process.

(a) In order for an Applicant to participate in the reservation system, the Department must review and approve an Application to become a Reservation System Participant (RSP). Applications will be

reviewed and presented to the Executive Director for approval in the order they are received. Any such approval will be subject to ratification by the Board prior to Commitment of Funds.

(b) Applications for recertification may be submitted ninety (90) days prior to the end of the RSP agreement term and will be required to demonstrate that all Application requirements are met.

(c) Administrative Deficiencies must be cured within ten (10) business days of the date of the deficiency notice. If Administrative Deficiencies are not clarified or corrected within ten business days from the deficiency notice date, the Application may be terminated.

§53.24. General Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with the following:

(1) An Applicant certification of compliance with state and federal laws and state and federal rules and guidance governing the HOME Program;

(2) A resolution signed and dated within the six (6) months preceding the Application submission date from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application;

(B) Commitment and amount of cash reserves, if applicable, for use during the Contract or RSP agreement term;

(C) Source of funds for Match obligation and Match dollar amount, if applicable;

(D) Name and title of the person authorized to represent the organization; and

(E) Signature authority to execute a contract;

(3) Any Applicant requesting \$25,000 or more must be registered in the federal Central Contractor Registration (CCR) and have a current Data Universal Numbering System (DUNS) number. Applicants requesting funds for multifamily housing development and that are "to-be-formed" are not required to submit a CCR or DUNS number until after award but prior to Contract execution. If the property will be owned by a partnership, the partnership must be the registrant. If a partnership will be receiving funds under the CHDO set-aside, the partnership and the CHDO must both be registered;

(4) An Application fee, to be defined in the NOFA, which is sufficient to discourage the submission of partial or incomplete Applications except as otherwise allowed by state statute;

(5) To be eligible for a new Contract award, an Applicant must have committed funds to at least 80% of the total number of contractually required Households or has committed at least 80% of the total Project funds on their current Contract for the same Program Activity. This provision shall not apply to Applications submitted for disaster relief funding or those with an exclusively different Service Area;

(6) An Application must be substantially complete when received by the Department. An Application will be terminated if an entire volume of the Application is missing; has excessive omissions of documentation from the threshold or selection criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. Such Application will be terminated without being processed as an Administrative Deficiency. To the extent that a review was able to be performed, specific reasons for the Department's termination will be included in the notification sent to the Applicant but, because of the suspended review, may not include an all inclusive list of deficiencies in the Application; and

(7) The Department may incentivize or provide preference to Applicants targeting very low and extremely low income Households or to Applicants that have successfully executed a previous HOME Contract with the Department. Such incentives may be established in the form of threshold or selection criteria in the NOFA and may be different for each Program Activity.

§53.25. Contract Award Limitations.

(a) Project Funds Limits. Project funds for Contract awards are limited to \$500,000 per Contract Administrator for Homeowner Rehabilitation and Contract for Deed Conversion Program Activity Applicants and \$300,000 per Contract Administrator for Homebuyer Assistance and Tenant-Based Rental Assistance Program Activity Applicants. The Contract award limits for Project funds for Single Family Development and Multifamily (Rental Housing) Development Program Activity Applicants may be higher and will be established in the NOFA for these activities.

(b) Contract Award Terms. With the exception of Tenant-Based Rental Assistance, all Program Activity Contract awards will have a Contract term of twenty-four (24) months exclusive of any applicable affordability period or loan term. Tenant-Based Rental Assistance Program Activity Contract awards will have a Contract term of thirty-six (36) months.

(c) Contract Award Benchmarks. All Contract Administrators must submit to the Department complete Project setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within twelve (12) months from the effective date of the Contract. All remaining funds will be automatically deobligated and returned to the Department unless an amendment has been requested in writing prior to this date and is approved.

(d) Amendments. The Division Director may approve amendments to Contract awards except amendments to extend the Contract and benchmarks by more than six (6) months, increase Project funds, or that would have negatively impacted the priority of the Board-approved Application. The Executive Director may approve amendments except to extend the Contract and benchmarks by more than twelve (12) months, increase Project funds by more than 25% or \$50,000, whichever is greater, or that would have negatively impacted the priority of the Board approved Application in the Executive Director's estimation. The Board may, on a case by case basis, approve amendments provided such approval would not cause a violation of the Department's rules or federal requirements.

(e) Voluntary deobligation. The Contract Administrator may fully deobligate funds in the form of a written request signed by the executor of the Contract. The Contract Administrator may partially

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deobligate funds under a Contract in the form of a written request from the executor if the letter also deobligates the associated number of targeted Households, funds for Administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract.

(f) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. Contract Administrator must respond in a timely manner to such requests from the Department. Prolonged or repeated failure to respond may result an Administrative Deficiency and ultimately in termination of the Contract by the Department.

(g) The Department reserves the right to reduce the amount requested in an Application, condition the award recommendation, or terminate the Application based on Program Activity or Project feasibility, past performance, underwriting analysis, or availability of funds. The recommendation with amendments, if any, approved by the Board, will supersede any conflicting Application information.

(h) Pre-Award Costs. Before the effective date of the HOME Contract, the Contract Administrator may incur and be reimbursed for travel costs, as provided for with Administrative funds, related to mandatory training required by the Department as a condition of receiving a HOME award and Contract. Department authorized pre-award costs for predevelopment costs, including but not limited to legal, architectural, engineering, appraisal, surveying, environmental, and market study fees, may be paid if incurred before the effective date of the Contract if the costs are in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

53.26. Reservation System Participant (RSP) Agreements.

(a) Terms of agreement. RSP agreements will have a twenty-four (24) month term for all Program Activities. Execution of an RSP agreement does not guarantee the availability of funds under a reservation system.

(b) Limits on Number of Reservations. The number of Homeowner Rehabilitation, Homebuyer Assistance or Single Family Development reservations for an RSP is limited to five (5) per county within the RSP's Service Area at any given time. The number of Tenant-Based Rental Assistance reservations for an RSP is limited to thirty (30) at any given time.

(c) Extremely Low-Income Households. Except for Households served with HBA or SFD funds, each RSP will be required to serve at least one (1) Household at or below 30% of AMFI out of every four (4) Households submitted and approved for assistance.

(d) Match. The requirements of this subsection are waived until August 31, 2011. An RSP must meet the tiered Match requirements per Program Activity for at least every fourth Household submitted and approved for assistance. For example, if Match is not provided for the first three (3) Households assisted by an RSP, the Match provided to the fourth Household must meet the Match requirement for all four (4) Households. (e) Completion of Construction. For Activities involving construction, an RSP must complete construction and submit all requests for disbursement within nine (9) months from the Commitment of Funds for the Activity.

(f) Extensions. The Division Director may approve one three (3) month time extension to the Commitment of Funds to allow for the completion of construction and submission of requests for disbursement.

(g) An RSP must remain in good standing with the Department, the State of Texas, and HUD. If an RSP is not in good standing, participation in the reservation system will be suspended and may result in termination of the RSP agreement.

§53.27. Procurement of Contractor.

The Department may procure a contractor or contractors to provide services for the administration of the HOME Program through a Request for Proposals. A contractor must provide services and/or administer HOME funds in accordance with state and federal rules and the program requirements of this chapter for the applicable Program Activity.

§53.28. General Administrative Requirements.

Unless otherwise provided in this chapter, the CA, RSP, or Development Owner, must comply with the following requirements for the administration and use of HOME funds:

- (1) Complete training, as applicable;
- (2) Provide all applicable Department Housing Contract System access request information and documentation requirements;
- (3) Establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the Auditor of the State of Texas, the United States General Accounting Office, the Comptroller of the State of Texas, and the Comptroller of the United States, or any of their duly authorized representatives;
- (4) For non-development Program Activities, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including the following:
 - (A) Develop and comply with written procurement selection criteria and committees;
 - (B) Develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds and appoint a Procurement Officer to manage any bid process;
 - (C) Ensure consultant or any procured service provider does not participate in or direct the process of procurement for professional service. In other words, a consultant cannot assist in their own procurement before or after an award is made;
 - (D) Procedures established for procurement of building construction contractors may not include requirements for the provision of general liability insurance coverage for an amount to exceed the value of the contract;

(E) Building construction contractors must be procured using a formal sealed bid procedure for single family New Construction, Reconstruction or Rehabilitation Activities or Projects;

(F) Professional service providers (consultants) must be procured using an open competitive procedure and may not be procured based solely on the lowest priced bid; and

(G) Any Request for Proposals or Invitation for Bid must include:

(i) An equal opportunity disclosure and that bidders are subject to search for listing on the Excluded Parties List;

(ii) Bidders' protest rights and outline the procedures bidders must take to address procurement related disputes;

(iii) A Conflict of Interest disclosure;

(iv) A clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;

(v) For sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract; and

(vi) For competitive proposal specific, disclose the selection/evaluation criteria;

(5) In instances where a potential conflict of interest exist, follow procedures to submit a request to the Department to grant an exception to any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication and a description of how the public disclosure was made. No HOME funds will be committed to or reserved to assist a Household until HUD has granted an exception to the Conflict of Interest provisions;

(6) Perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or the occurrence of the loan closing, if applicable;

(7) Develop and comply with written applicant intake and selection criteria for and ensure program eligibility (except for Multifamily Development) and promote and comply with Fair Housing requirements;

(8) Except for Multifamily Development, complete applicant intake and applicant selection. Notify each applicant Household in writing of either acceptance or denial of HOME assistance within sixty (60) days following receipt of the intake application. For Homeowner Rehabilitation Assistance and Contract for Deed Conversion the CA or RSP must:

- (A) Provide Rehabilitation as an available option to Households, provide Households with a general cost estimate, and to the extent that Rehabilitation would not meet the program requirements, explain these program requirements;
- (B) Unless not allowed by local code, provide replacement of an existing housing unit with a new MHU as an available option; and
- (C) Explain relocation as an available option to any Households located within the 100-year floodplain and present the costs associated with flood insurance;
- (9) Determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609;
- (10) Except for Multifamily Development and Single Family Development, complete an updated income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the HOME assistance is provided to the Household. For Single Family Development, complete income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the contract to purchase the housing unit is executed with the Household. For Tenant-Based Rental Assistance, in the event that a Household's monthly gross income changes by more than \$200, the Household must be recertified and the rental subsidy recalculated;
- (11) For single family Program Activities involving construction, perform initial inspection and at least four (4) progress inspections. Property inspections must include photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms. The inspection must be signed and dated by the inspector and CA or RSP;
- (12) Submit requests for the Commitment or Reservation of Funds, loan closing preparation, and disbursements and all required information and verification documentation in the Housing Contract System. A request will not be reviewed by the Department until the CA, RSP, or Development Owner has submitted all required documentation. If, during review, the Department identifies Administrative Deficiencies, the Department will allow a cure period of ten (10) business days beginning at the start of the first business day following the date the CA, RSP or Development Owner is notified of the deficiency. If any Administrative Deficiency remains after the cure period, the Department, in its sole discretion, shall disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds;
- (13) Not proceed or allow a contractor to proceed with construction, including demolition, on any Activity, Project or Development without first completing the required environmental clearance procedures, preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable;
- (14) Not retain Program Income of any kind, including Program Income to fund other eligible HOME Activities;

- (15) Submit any Program Income received by the CA, RSP or Development Owner to the Department within ten (10) business days of receipt. Return any refunds to the Department's accounting division and include a written explanation of the return of funds, the Contract number, name of CA, RSP, or Development Owner, Activity address and Activity number referenced on the check;
- (16) Submit required documentation for Project completion reports no later than thirty (30) days after the completion of the Activity. For MFD, the Development Owner must periodically update completion reports to provide information on tenants until all HOME units have been occupied;
- (17) For Contract awards, submit certificate of Contract Completion within ten (10) business days of the Department's request;
- (18) Submit to the Department reports or information regarding the operations related to HOME funds provided by the Department; and
- (19) Match contributed to a Project or Activity cannot be mortgage revenue bonds, HOME-match eligible projects, and cannot include any other sources of Department funding unless otherwise approved by the Department.

SUBCHAPTER C HOMEOWNER REHABILITATION ASSISTANCE (HRA) PROGRAM ACTIVITY.

§53.30. Homeowner Rehabilitation Assistance (HRA) Program Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with the following:

(1) The requirements of this subsection are waived until August 31, 2011. An itemized schedule of the proposed Match and evidence to support the Applicant's ability to provide the required Match. For Applications submitted to become an RSP, the Department may withhold disbursements if after every four reservations sufficient Match documentation has not been provided. The Department shall use population figures from the most recently available U.S. Census to determine the applicable tier for an Application. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established in the form of a threshold or selection criteria and may be different for each Program Activity. Except for Applications for disaster relief, Match shall be required based on the following tiers:

(A) zero percent of Project funds if serving a city of less than 3,000 Persons or an unincorporated area of a county with less than 20,000 Persons;

(B) ten percent of Project funds if serving a city of between 3,001 and 5,000 Persons or an unincorporated area of a county of between than 20,001 and 75,000 Persons; and

(C) twelve and one-half percent of Project funds for all other applications.

(2) Documentation of a commitment of at least \$80,000 or for a Contract award 80% of the award amount, whichever is less, in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the above requirement; or

(C) The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

(3) Housing construction plans must be certified by a licensed architect. The Department may procure and make architect certified plans available.

(A) The Department will reimburse only for the first time a set of architectural plans are used unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(B) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§53.31. Homeowner Rehabilitation Assistance (HRA) Program Requirements.

(a) Eligible activities are limited to:

(1) The Rehabilitation or Reconstruction of existing owner-occupied housing on the same site. The Rehabilitation of an MHU is not an eligible activity;

(2) The New Construction of site-built housing on the same site to replace an existing owner-occupied Manufactured Housing Unit (MHU);

(3) For only the purposes of relocating the existing housing out of the floodplain, the replacement of existing owner-occupied housing with an MHU or New Construction of site-built housing on another site;

(4) If housing unit is uninhabitable as a result of disaster or condemnation by local government, the Household is eligible for the New Construction of site-built housing or an MHU under this section provided the assisted Household documents that the housing unit was previously their Principal Residence through evidence of a homestead exemption from the local taxing jurisdiction and Household certification; or

(5) If allowable under the NOFA, the refinance of an existing mortgage meeting the federal requirements at 24 CFR §92.206(b) and any additional requirements in the NOFA.

(b) HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code.

(c) Real property taxes assessed on the housing unit must be current and/or the Household must be participating in an approved payment plan with the taxing authority.

(d) The property must not be encumbered with tax liens, child support liens, or mechanic or materialmen's liens.

(e) If a housing unit has an existing mortgage loan and Department funds are provided in the form of a loan, the Department will require a first lien if the loan has an outstanding balance that is less than the investment of HOME funds and any of the following are true:

- (1) A federal affordability period is required; or
- (2) Any existing mortgage has been in place for less three years from the date the Household applies for assistance; or
- (3) The HOME loan is structured as a repayable loan.

(f) The Household must be current on any existing mortgage loans or home equity loans. If the Department's assistance is provided in the form of a loan, the property cannot have any existing home equity loan liens.

(g) The total Project costs are inclusive of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), and Match funds for Project costs, and are limited to:

- (1) Reconstruction and New Construction of site-built housing: The lesser of \$73.00 per square foot or \$80,000 or for Households of 6 or more Persons the lesser of \$73.00 per square foot or \$85,000;
- (2) Replacement with an MHU: \$65,000;
- (3) Rehabilitation that is not Reconstruction: \$30,000; and
- (4) Refinancing of existing mortgages: in addition to the costs limited under paragraphs (1) -(3) of this subsection, the cost to refinance an existing mortgage is limited to \$35,000. To qualify, a Household's current total housing payment must be greater than 30% of their monthly gross income or their total monthly recurring debt payments must be greater than 45% of their gross monthly income.

(h) In addition to the Project costs allowable under subsection (g) of this section, up to \$5,000 will be allowed in Project costs for additional sitework related to accessibility features if the house will be located more than 50 feet from the nearest paved roadway or if the house is being elevated above the floodplain.

(i) Project soft costs are limited to:

- (1) Reconstruction or New Construction: no more than \$7,000 per housing unit;
- (2) Replacement with an MHU: no more than \$3,500 per housing unit;
- (3) Rehabilitation that is not Reconstruction: \$5,000 per housing unit. This limit may be exceeded for lead-based paint remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Project soft costs for housing units that are Reconstructed or if the existing housing unit was built after December 31, 1977; and

(4) Third-party Project soft costs related to loan closing requirements, such as appraisals, title reports or insurance, tax certificates, recording fees, and surveys are not subject to a maximum per Activity or Project.

(j) Funds for Administrative costs are limited to no more than 4% of the total Project costs, exclusive of Project soft costs and Match funds.

(k) In the following instances, the assistance to an eligible Household shall be in the form of a loan in the amount of the total Project costs excluding Match funds. The loan will be at 0% interest and include deferral of payment and annual pro-rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

- (1) An MHU being replaced with newly constructed housing (site-built) on the same site;
- (2) Any housing unit being replaced on another site;
- (3) Any housing unit that is being relocated out of the floodplain or replaced due to uninhabitability as allowed under subsection (b) of this section; and
- (4) Any Project Activity that requires a federal afford-ability period.

(l) For any Project Activity involving refinancing described in subsection (g)(4) of this section, the HOME funds used for refinancing shall be structured as a fully amortizing, repayable loan at 0% interest and the loan term calculated by setting the total estimated housing payment equal to 25% of the Household’s gross monthly income. Any other Project costs, excluding soft costs, shall be structured as a deferred forgivable loan with an affordability term consistent with the Figure: 10 TAC §53.31(m).

(m) In all other instances not described in subsection (k) of this section and Project costs, exclusive of Project soft costs and costs related to refinancing an existing mortgage, described in subsection (l) of this section, the assistance to an eligible Household may be in the form of a loan or grant agreement with an affordability term for the amount of the total Project costs excluding Match funds and based on the Household’s AMFI as reflected in Figure: 10 TAC §53.31(m)

Figure: 10 TAC §53.31(m)

AMFI	Form of Assistance
≤30% AMFI	0% interest, 5-year deferred, forgivable loan, or grant agreement.
>30% and ≤50% AMFI	0% interest, 10-year deferred, forgivable loan, or grant agreement.
>50% and ≤60% AMFI	0% interest, 15-year deferred, forgivable loan, or grant agreement.
>60% and ≤80% AMFI	0% interest, 15-year term repayable loan

(n) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the loan or grant agreement will cease and the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(o) In the event that a federal affordability period is not required and the housing unit transfers by devise, descent or operation of law upon the death of the assisted homeowner, the heir or remainderman Household or if sold by the decedent's estate, the purchasing Household must qualify for assistance in accordance with this chapter in order for the forgiveness of the loan or grant agreement to continue until maturity.

(p) In the event that a federal affordability period is not required, the housing unit is sold and the purchasing Household does not provide documentation evidencing their income eligibility, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority without prior written consent of the Department unless the entire balance on the loan or grant agreement will be paid at closing.

(q) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes and standards. In addition, housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with this chapter.

§53.32. Homeowner Rehabilitation Assistance (HRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following true and complete information, certified as such, with a request for the Commitment or Reservation of Funds:

- (1) Head of Household name and address of housing unit for which assistance is being requested;
- (2) A budget that includes the amount of Project funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;
- (3) Verification of environmental clearance;
- (4) A copy of the Household's intake application, which must include:
 - (A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;
 - (B) Identification and resolution of potential and/or existing conflicts of interest;
 - (C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;
 - (D) Identification if any Household member owes a debt to the State of Texas;

- (E) Identification of head of Household's race and ethnicity;
 - (F) Household special needs status, if applicable;
 - (G) Names of Household members who are temporarily absent and reason for absence, if applicable;
 - (H) Future Household members and explanation, if applicable;
 - (I) Income sources and gross amounts for all Household members;
 - (J) Full-time student status of Household members over age 18, if applicable;
 - (K) Type and source of all assets owned by Household members including cash value and annual asset income;
 - (L) Year in which property to be assisted was built;
 - (M) Household's occupancy requirements including number of bedrooms being requested;
 - (N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and
 - (O) Signatures of all Household members age 18 or over;
- (5) Certification of the income eligibility of the Household signed by the CA or RSP and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80% AMFI, all documentation used to determine the income of the Household;
- (6) Provide written consent from all Persons who have a valid lien or ownership interest in the Property for the rehabilitation or reconstruction activities;
- (7) In the instance of relocation in accordance with §53.31(a)(3) of this chapter (relating to HRA Program Requirements), the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME Project funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for an Activity under this paragraph, the CA or RSP Match obligation may be reduced by the cost of such demolition without any Contract amendment in order to facilitate relocation;
- (8) Identification of any Lead-Based Paint (LBP);

(9) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(10) Consent to demolish from any existing mortgage lien holders and consent to subordinate to the Department's loan, if applicable;

(11) If applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, duplication of benefit, or floodplain mitigation;

(12) A title commitment or policy or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or 99-year leasehold. In instances of an MHU, a Statement of Ownership and Location (SOL). Together, these documents must evidence the definition of Homeownership is met. The title commitment or down date endorsement must not be older than ninety (90) days on the date submitted to the Department for a Commitment of Funds;

(13) Tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current; and

(14) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing. The CA or RSP must comply with or submit the following with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

(1) A title commitment that expires prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(2) In the instances of replacement with an MHU, information necessary to draft loan documents and issue SOL; and

(3) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship.

(c) Disbursement of funds. The CA or RSP must comply with all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement.

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

- (2) If applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;
- (3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and CA or RSP;
- (4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;
- (5) The executed grant agreement or original, executed, legally enforceable loan documents and SOL, if applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;
- (6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA or RSP to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA or RSP as may be necessary or advisable for compliance with all Program Requirements;
- (7) With the exception of up to 10% of the total funds available for Administrative costs, the request for funds for Administrative costs must be proportionate to the amount of Project costs requested or already disbursed;
- (8) Include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction;
- (9) For final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot occurred for Newly Constructed or Rehabilitated housing unit, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation; and
- (10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to

remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

SUBCHAPTER D HOMEBUYER ASSISTANCE (HBA) PROGRAM ACTIVITY.

§53.40. Homebuyer Assistance (HBA) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with the following:

(1) The requirements of this subsection are waived until August 31, 2011. An itemized schedule of the proposed Match and evidence to support the Applicant's ability to provide the required Match. The Department may not require such support at the time an Application is submitted when the funds are made available under a reservation system. Except for Applications for disaster relief and Persons with Disabilities set-asides, the amount of Match required must be at least 5% of Project funds requested. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established in the form of a threshold or selection criteria and may be different for each Program Activity.

(2) Documentation of a commitment of at least \$80,000 or for a Contract award 100% of the award amount, whichever is less, in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the above requirement; or

(C) The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

§53.41. Homebuyer Assistance (HBA) Program Requirements.

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation for accessibility modifications of single family housing units.

(b) A new MHU is an eligible property type for acquisition only. HOME funds may be used to acquire a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act.

(c) The Household must complete a homebuyer counseling program/class.

(d) The first lien purchase loans must comply with the following requirements:

- (1) No adjustable rate mortgage loans (ARMs) or temporary interest rate buy-down loans are allowed;
- (2) No mortgage loans with a total loan to value equal to or greater than 100% are allowed;
- (3) No Subprime Mortgage Loans are allowed;
- (4) Other than surveys and appraisals reimbursed to third-parties and fees allowed for the origination of single family mortgage revenue bond and mortgage credit certificate programs, fees charged by the lender in connection with mortgage loans may not exceed \$2,500;
- (5) The debt to income ratio (back-end ratio) may not exceed 45%;
- (6) No identity of interest relationship between the lender and the Household is allowed; and
- (7) If an identity of interest exists between the Household and the seller, the Department may require additional documentation that evidences that the sales price is equal to or less than the appraised value of the property as documented by a Third-Party appraisal ordered by the first lien lender. If an identity of interest exists between the builder and CA or RSP, the CA or RSP must provide documentation that evidences that the sales price does not provide for a profit of more than 15% of the total hard construction costs and does not exceed the current appraised value as documented by a Third-Party appraisal ordered by the first lien lender.

(e) The total Project costs are inclusive of acquisition and closing costs, hard construction costs for accessibility modifications, and Match funds, and limited to:

- (1) Acquisition and closing costs: the lesser of \$20,000 or the amount necessary as determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than 25% of the Household's gross monthly income based on a thirty (30) year amortization schedule; and
- (2) Rehabilitation for accessibility modifications: \$20,000.

(f) Project soft costs are limited to:

- (1) Acquisition and closing costs: no more than \$1,500 per housing unit; and
- (2) Rehabilitation for accessibility modifications: \$5,000 per housing unit.

(g) Funds for Administrative costs are limited to no more than 4% of the total Project costs, exclusive of Project soft costs and Match funds.

(h) The assistance to an eligible Household shall be in the form of a loan in the amount of the total Project costs excluding Match funds. The loan will be at 0% interest and include deferral of payment

and annual pro-rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(i) Any forgiveness of the Loan occurs upon the anniversary date of the Household's continuous occupancy as its Principal Residence and continues on an annual pro-rata basis until maturity of the Loan.

(j) In the event that the housing unit ceases to be the Principal Residence of the Household, the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(k) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the Loan, if applicable, will cease.

(l) In the event that the housing unit is sold, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority unless the balance on the Loan will be paid at closing.

(m) Housing units that will be rehabilitated with HOME funds must meet or exceed the TMCS, as applicable, and all applicable codes and standards. In addition, housing that is Rehabilitated under this chapter must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

§53.42. Homebuyer Assistance (HBA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following true and complete information, certified as such, with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Project funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested. A maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

- (B) Identification and resolution of potential and/or existing conflicts of interest;
 - (C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;
 - (D) Identification if any Household member owes a debt to the State of Texas;
 - (E) Identification of head of Household's race and ethnicity;
 - (F) Household special needs status, if applicable;
 - (G) Names of Household members who are temporarily absent and reason for absence, if applicable;
 - (H) Future Household members and explanation, if applicable;
 - (I) Income sources and gross amounts for all Household members;
 - (J) Full-time student status of Household members over age 18, if applicable;
 - (K) Type and source of all assets owned by Household members including cash value and annual asset income;
 - (L) Year in which property to be assisted was built;
 - (M) Household's occupancy requirements including number of bedrooms being requested;
 - (N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and
 - (O) Signatures of all Household members age 18 or over;
- (5) Certification of the income eligibility of the Household signed by the CA or RSP, and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80% AMFI, all documentation used to determine the income of the Household;
- (6) Identification of Lead-Based Paint (LBP);
- (7) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;
- (8) Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(9) If applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, or duplication of benefit; and

(10) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing. The CA or RSP must submit the following with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

(1) A title commitment to issue a title policy not older than ninety (90) days when submitted for a Commitment of Funds that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and

(2) A good faith estimate that is or letter from the lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien mortgage loan requirements, and the requirements of this chapter.

(c) Disbursement of funds. The CA or RSP must comply all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement:

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

(2) If applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) Property inspections. The inspection must be signed and dated by the inspector and CA, RSP, or Development Owner;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records

of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA or RSP to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA or RSP as may be necessary or advisable for compliance with all program requirements;

(7) With the exception of up to 10% of the total funds available for Administrative costs, the request for funds for Administrative costs must be proportionate to the amount of Project costs requested or already disbursed;

(8) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(9) For Activities involving Rehabilitation, include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction and until submission of documentation required for Project completion reports; and

(10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

SUBCHAPTER E CONTRACT FOR DEED CONVERSION (CFDC) PROGRAM ACTIVITY

§53.50. Contract for Deed Conversion (CFDC) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with the following:

(1) Documentation of a commitment of at least \$80,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the above requirement; or

(C) The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

(2) Housing construction plans must be certified by a licensed architect. The Department may procure and make architect certified plans available.

(A) The Department will reimburse only for the first time a set of architectural plans are used unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(B) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§53.51. Contract for Deed Conversion (CFDC) Program Requirements.

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units.

(b) A new MHU is an eligible property type for acquisition only. An MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an existing unit with a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code.

(c) The Household's income must not exceed 60% AMFI and the Household must complete a homebuyer counseling program/class.

(d) The Property must not be encumbered with tax liens, child support liens, or mechanic or materialmen's liens.

(e) The Department will require a first lien position.

(f) The total Project costs are inclusive of acquisition costs, closing costs, hard construction costs, demolition costs, aerobic septic systems, and Match funds, and limited to:

(1) Acquisition and closing costs: \$35,000. In the case of a contract for deed conversion housing unit that involves the acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed \$40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: The lesser of \$73.00 per square foot or \$80,000 or for Households of 6 or more Persons the lesser of \$73.00 per square foot or \$85,000;

(3) Replacement with an MHU: \$65,000; and

(4) Rehabilitation that is not Reconstruction: \$30,000.

(g) In addition to the Project costs allowable under subsection (f) of this section, up to \$5,000 will be allowed in Project costs for additional sitework related to accessibility features if the house will be located more than 50 feet from the nearest paved roadway or if the house is being elevated above the floodplain.

(h) Project soft costs are limited to:

(1) Acquisition and closing costs: no more than \$1,500 per housing unit;

(2) Reconstruction or New Construction: no more than \$7,000 per housing unit;

(3) Replacement with and MHU: no more than \$3,500 per housing unit; and

(4) Rehabilitation that is not Reconstruction: \$5,000 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Project soft costs for housing units that are Reconstructed or if the existing housing unit was built after December 31, 1977.

(i) Funds for Administrative costs are limited to no more than 4% of the total Project costs, exclusive of Project soft costs and Match funds.

(j) The assistance to an eligible Household shall be in the form of a loan in the amount of the total Project costs excluding Match funds. The loan will be at 0% interest and include deferral of payment

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and annual pro-rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(k) Any forgiveness of the Loan occurs upon the anniversary date of the Household's continuous occupancy as its Principal Residence and continues on an annual pro-rata basis until maturity of the Loan.

(l) In the event that the housing unit ceases to be the Principal Residence of the Household, the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(m) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the loan, if applicable, will cease.

(n) In the event that the housing unit is sold, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority unless the balance on the loan will be paid at closing.

(o) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes and standards. In addition, housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only, must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

§53.52. Contract for Deed Conversion (CFDC) Administrative Requirements.

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following true and correct information, certified as such, with a request for the Commitment or Reservation of Funds:

- (1) Head of Household name and address of housing unit for which assistance is being requested;
- (2) A budget that includes the amount of Project funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;
- (3) Verification of environmental clearance;
- (4) A copy of the Household's intake application, which must include:

- (A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;
 - (B) Identification and resolution of potential and/or existing conflicts of interest;
 - (C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;
 - (D) Identification if any Household member owes a debt to the State of Texas;
 - (E) Identification of head of Household's race and ethnicity;
 - (F) Household special needs status, if applicable;
 - (G) Names of Household members who are temporarily absent and reason for absence, if applicable;
 - (H) Future Household members and explanation, if applicable;
 - (I) Income sources and gross amounts for all Household members;
 - (J) Full-time student status of Household members over age 18, if applicable;
 - (K) Type and source of all assets owned by Household members including cash value and annual asset income;
 - (L) Year in which property to be assisted was built;
 - (M) Household's occupancy requirements including number of bedrooms being requested;
 - (N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and
 - (O) Signatures of all Household members age 18 or over;
- (5) Certification of the income eligibility of the Household signed by the CA or RSP and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80% AMFI, all documentation used to determine the income of the Household;
- (6) Identification of Lead-Based Paint (LBP);
- (7) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(8) If applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, duplication of benefit, or floodplain mitigation; and

(9) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing. The CA or RSP must submit the following with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

(1) A title commitment to issue a title policy not older than ninety (90) days when submitted for a Commitment of Funds that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(2) In the instances of replacement with an MHU, information necessary to draft loan documents and issue Statement of Ownership and Location (SOL);

(3) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship; and

(4) A copy of the recorded contract for deed and a current payoff statement.

(c) Disbursement of funds. The CA or RSP must comply all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement.

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

(2) If applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and CA or RSP;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for

disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents, and SOL, as applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA, RSP, or Development Owner to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA or RSP as may be necessary or advisable for compliance with all program requirements;

(7) With the exception of up to 10% of the total funds available for Administrative costs, the request for funds for Administrative costs must be proportionate to the amount of Project costs requested or already disbursed;

(8) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(9) Include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction;

(10) For final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation; and

(11) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

SUBCHAPTER F TENANT-BASED RENTAL ASSISTANCE (TBRA) PROGRAM ACTIVITY.

§53.60. Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria.

All Applicants and Applications must submit Documentation of a commitment of at least \$15,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

- (1) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or
- (2) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the above requirement; or
- (3) The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

§53.61. Tenant-Based Rental Assistance (TBRA) Program Requirements.

- (a) The Household must participate in a self-sufficiency program.
- (b) The amount of assistance will be determined using the Housing Choice Voucher Method.
- (c) Households certifying to zero income must also complete a questionnaire which includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.
- (d) The Household paid portion of the monthly rent cannot exceed 40% of the Household's gross monthly income.
- (e) Project funds are limited to:
 - (1) Rental subsidy: No more than twenty-four (24) months per Household with an additional twelve (12) months extension available to Households participating in a reservation system; and
 - (2) Security deposit: No more than the amount equal to two (2) month's rent for the unit.
- (f) The rent (payment) standard must be the current HUD "Fair Market Rent for the Housing Choice Voucher Program" at the time the household is income certified (or the rental coupon is executed). In instances where the area rents exceed the established Fair Market Rent, the CA or RSP may submit a

written request to the Department for approval of a higher rent. The request must be evidenced by a market study. For HOME-assisted units, the payment standard must be the current HOME rent applicable for the unit.

(g) Funds for Administrative costs are limited to 8% of Project funds excluding Match funds. Funds for Administrative costs may be increased an additional 1% of Project funds, if Match is provided in an amount equal to 5% or more of Project funds.

(h) Rental units must be inspected prior to occupancy, annually upon Household recertification, and must comply with Housing Quality Standards established by HUD.

§53.62. Tenant-Based Rental Assistance (TBRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following with a request for the Commitment or Reservation of Funds:

- (1) Head of Household name and address of housing unit for which assistance is being requested;
- (2) A budget that includes the amount of Project funds and Administrative costs requested, Match to be provided, evidence that Project cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;
- (3) Verification of environmental clearance;
- (4) A copy of the Household's intake application, which must include:
 - (A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;
 - (B) Identification and resolution of potential and/or existing conflicts of interest;
 - (C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;
 - (D) Identification if any Household member owes a debt to the State of Texas;
 - (E) Identification of head of Household's race and ethnicity;
 - (F) Household special needs status, if applicable;
 - (G) Names of Household members who are temporarily absent and reason for absence, if applicable;
 - (H) Future Household members and explanation, if applicable;
 - (I) Income sources and gross amounts for all Household members;

- (J) Full-time student status of Household members over age 18, if applicable;
- (K) Type and source of all assets owned by Household members including cash value and annual asset income;
- (L) Year in which property to be assisted was built;
- (M) Household's occupancy requirements including number of bedrooms being requested;
- (N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and
- (O) Signatures of all Household members age 18 or over;

(5) Certification of the income eligibility of the Household signed by the CA or RSP, and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income and rental subsidy of the Household;

(6) Identification of Lead-Based Paint (LBP);

(7) If applicable, documentation to address or resolve any potential Conflict of Interest or duplication of benefit; and

(8) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The CA or RSP must comply all of the following requirements for a request for disbursement of funds. Submission of documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement.

(1) If required or applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(2) Property inspections. The inspection must be signed and dated by the inspector and CA or RSP;

(3) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

- (4) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA or RSP to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA, RSP, or Development Owner as may be necessary or advisable for compliance with all Program Requirements;
- (5) With the exception of up to 25% of the total funds available for Administrative costs, the request for funds for Administrative costs must be proportionate to the amount of Project costs requested or already disbursed;
- (6) Requests may come in up to ten (10) days in advance of the first day of the following month;
- (7) For final disbursement requests, submission of documentation required for Project completion reports; and
- (8) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

SUBCHAPTER G SINGLE FAMILY DEVELOPMENT (SFD) PROGRAM ACTIVITY.

§53.70. Single Family Development (SFD) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with the following:

- (1) An Application for CHDO certification.
- (2) If the total of Department loans equals more than 50% of the total development cost, except for developments also financed with USDA funds, the Applicant must provide:
 - (A) Evidence of a line of credit or equivalent tool equal to at least 10% of the total development cost from a financial institution that is available for use during the proposed development activities; or
 - (B) A letter from a third party CPA verifying the capacity of the owner or developer to provide at least 10% of the total development cost as a short term loan for development; and
 - (C) A letter from the developer's or owner's bank(s) confirming funds amounting to 10% of the total development cost are available.
- (3) A proposed development plan that is consistent with the requirements of §53.71 of this chapter, all other federal and state rules, and includes:
 - (A) A floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition;
 - (B) A FEMA Issued Flood Map that identifies the location of the proposed site(s);
 - (C) Letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable;
 - (D) Documentation of site control of each proposed lot, as follows: A recorded warranty deed with corresponding executed settlement statement; or a contract or option for the purchase of the proposed lots that is valid for at least one hundred-twenty (120) days from the date of application submission; and
 - (E) An "as vacant" appraisal of at least one of the proposed lots if: The Applicant has an Identity of Interest with the seller or current owner of the property; or any of the proposed property is part of a newly developed or under-development subdivision in which at least three other third-party sales cannot be evidenced. The purchase price of any lot in which the current owner has an Identity of Interest must comply with the Identity of Interest transfer requirements in §1.32 of this title.

(4) The Department may prioritize Applications or otherwise incentivize Applications that partner with other lenders to provide permanent purchase money financing for the purchase of units developed with funds provided under this subchapter.

§53.71. Single Family Development (SFD) Program Requirements.

(a) Eligible activities include the acquisition and New Construction or acquisition and Rehabilitation of single family housing. Single family housing units assisted with HOME funds must comply with the required affordability requirements as defined at 24 CFR §92.254.

(b) This Program Activity is a CHDO-eligible activity.

(c) The Household's income must not exceed 60% AMFI and the Household must complete a homebuyer counseling program/class.

(d) Each unit must meet the following design and quality requirements:

(1) For New Construction and Reconstruction, current applicable International Residential Code, local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the 24 CFR §92.251(a);

(2) Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Disposal and Energy-Star or equivalently rated dishwasher (must only be provided as an option to each Household); Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and Paved off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car;

(3) Contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(4) Each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space; and

(5) Be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(e) The total hard construction costs are limited as follows:

(1) Reconstruction and New Construction of site-built housing: The hard construction costs are limited to \$73.00 per square foot and \$80,000 or for Households of 6 or more Persons \$85,000; and

(2) Rehabilitation that is not Reconstruction: \$30,000.

(f) Developer fees (including consulting fees) are limited to 15% of the total hard construction costs.

(g) Construction period financing for each unit shall be structured as a 0% interest loan with a six (6) month term. The maximum construction loan amount may not exceed the total sales price less developer fees/profit, homebuyer closing costs, and other ineligible Project costs. Prior to construction loan closing, a sales contract must be executed with a qualified homebuyer.

(h) The HOME assistance to the homebuyer shall be structured as a first and/or second lien loan(s) as follows:

(1) The downpayment assistance is limited to \$15,000 and shall be structured as a fifteen (15) year deferred, forgivable loan with a subordinate lien; and

(2) A first lien conventional mortgage not provided by the Department must meet the mortgage financing requirements applicable to §53.41(d) of this chapter. If the Department is providing the first lien mortgage with HOME financing, the loan will be fully amortizing with a thirty (30) year term and the Department will require a debt to income ratio (back-end ratio) not to exceed 45%. The total estimated housing payment (including principal, interest, property taxes, and insurance) shall be no less than 25% and no greater than 30% of the Household's gross monthly income. Should the estimated housing payment be less than 25%, the Department shall reduce the amount of downpayment assistance and/or charge an interest rate to the homebuyer such that the total estimated housing payment is no less than 25% of the homebuyer's gross income. In no instance shall the interest rate charged to the homebuyer exceed 5%. The Department shall use to the Household's income certification to make this determination.

(i) Earnest money is limited to no more than \$500, which will be credited to the homebuyer at closing. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.

(j) If a Household should become ineligible or otherwise cease participation and a replacement Household is not located within ninety (90) days of the end of the construction period, all additional funding closings and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.

(k) The Division Director may approve the use of alternative floorplans or lots from those included in the approved Application, provided the requirements of this section can still be met and such changes do not materially affect the total budget.

§53.72. Single Family Development (SFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following with a request for the Commitment or Reservation of Funds:

- (1) Head of Household name and address of housing unit for which assistance is being requested;
- (2) A budget that includes the amount of Project funds specifying the acquisition cost, construction costs, developer fees. A maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;
- (3) Verification of environmental clearance;
- (4) A copy of the Household's intake application, which must include:
 - (A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;
 - (B) Identification and resolution of potential and/or existing conflicts of interest;
 - (C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;
 - (D) Identification if any Household member owes a debt to the State of Texas;
 - (E) Identification of head of Household's race and ethnicity;
 - (F) Household special needs status, if applicable;
 - (G) Names of Household members who are temporarily absent and reason for absence, if applicable;
 - (H) Future Household members and explanation, if applicable;
 - (I) Income sources and gross amounts for all Household members;
 - (J) Full-time student status of Household members over age 18, if applicable;
 - (K) Type and source of all assets owned by Household members including cash value and annual asset income;
 - (L) Year in which property to be assisted was built;
 - (M) Household's occupancy requirements including number of bedrooms being requested;
 - (N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including

Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and

(O) Signatures of all Household members age 18 or over;

(P) Certification of the income eligibility of the Household signed by the CA, RSP, or Development Owner, and all Household members age 18 or over, and including the date of the income eligibility determination. For TBRA and in instances the total Household income is within \$3,000 of the 80% AMFI, all documentation used to determine the income of the Household;

(6) Identification of Lead-Based Paint (LBP);

(7) Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(8) If applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, duplication of benefit, or floodplain mitigation; and

(9) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing. The CA, RSP or Development Owner must submit the following with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

(1) A title commitment to issue a title policy not older than ninety (90) days when submitted for a Commitment of Funds that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(2) Within ninety (90) days after the loan closing date, the Contract Administrator or Development Owner must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within ninety (90) days after the Loan closing date will result in the Department withholding payment for disbursement requests; and

(3) A draft settlement statement that is consistent with the executed sales contract, the first lien mortgage loan requirements (as applicable), and the terms of this Contract will be provided to Department.

(c) Disbursement of funds. The CA or RSP must comply all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement.

- (1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;
- (2) If required or applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;
- (3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and CA, RSP, or Development Owner;
- (4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;
- (5) Original, executed, legally enforceable loan documents containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;
- (6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA, RSP, or Development Owner to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA, RSP, or Development Owner as may be necessary or advisable for compliance with all Program Requirements;
- (7) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;
- (8) Include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction;
- (9) For final disbursement requests, submission of documentation required for Project completion reports; and

(10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

**SUBCHAPTER H MULTIFAMILY (RENTAL HOUSING) DEVELOPMENT (MFD)
PROGRAM ACTIVITY.**

§53.80. Multifamily (Rental Housing) Development (MFD) Threshold and Selection Criteria.

<*>53.80. Multifamily (Rental Housing) Development (MFD) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with the following:

(1) If the total of Department loans equals more than 50% of the total development cost, except for developments also financed with USDA funds, the Applicant must provide:

(A) Evidence of a line of credit or equivalent financing equal to at least 10% of the total development cost from a financial institution that is available for use during the proposed development activities; or

(B) A letter from a third party CPA verifying the capacity of the owner or developer to provide at least 10% of the total development cost as a short term loan for development; and

(C) A letter from the developer's or owner's bank(s) confirming funds amounting to 10% of the total development cost are available.

(2) Applications must comply with all of the current Qualified Allocation Plan in effect at the time of Application's submission at §49.8 or §50.8 of this title except as follows for Applications not also seeking an allocation of housing tax credits or tax-exempt bonds:

(A) The "Application Acceptance Period," "Resolutions Delivery Date," and "Third Party Reports Delivery Date" shall be replaced with the date that the Application for HOME funds is submitted to the Department;

(B) The date of "Commitment" and shall mean the date the HOME "Contract" is executed;

(C) The date of "10% Test Certification" and "Cost Certification" shall mean prior to release of retainage;

(D) The threshold requirement for Site Control in (8)(A) must be valid for 120 days from the date that the Application is submitted with an option to extend at least ninety (90) days.

(3) Except for applications awarded under the Persons with Disabilities set-aside or USDA §515 applications, Match equal to 2% of the HOME award must be provided. Documentation of the Applicant's ability to meet this requirement shall be required in the Application in the form of a commitment from the organization providing the Match. The Department may incentivize or provide preference to Applicants committing to provide additional Match above

the requirement of this subsection. Such incentive may be established in the form of a Threshold or Selection scoring criterion. Match in the form of a property tax abatement will only be accepted if a letter from the applicable appraisal district is provided and such letter documents a cash value and duration for such exemption sufficient to meet the HUD requirements for documentation of Match.

(4) The maximum HOME award may not exceed 90% of the total development costs ("TDC") unless a resolution of support for the development is made by the local unit of government in which the proposed development resides and/or the proposed development is located in an area where the HUD Fair Market Rents are equal to the respective HOME Rent Limit for a one-bedroom unit but will be limited as reflected in Figure: 10 TAC §53.80(4). The remaining percentage of total development cost must be in the form of permanent loans with a maturity of at least twenty (20) years, in-kind contributions or grants from third-party private or public entities. Developments with USDA or other government-sponsored loans that will remain as permanent financing may be used to satisfy this requirement from a public or private entity. Loans or grants from the Department will not satisfy this requirement.

Figure: 10 TAC §53.80(4)

Rent	Resolution from Local Government	Maximum Award as % of TDC	% of TDC from other sources
FMR greater than High Home	No	90%	10%
FMR greater than High Home	Yes	92%	8%
FMR equal to High Home	No	93%	7%
FMR equal to High Home	Yes	95%	5%
FMR equal to Low Home	No	96%	4%
FMR equal to Low Home	Yes	98%	2%

(5) For Applications proposing New Construction, documentation sufficient to meet the Site and Neighborhood Standards required in 24 CFR §92.202

§53.81. Multifamily (Rental Housing) Development (MFD) Program Requirements.

(a) Eligible activities include the acquisition or refinancing and New Construction or Rehabilitation of multifamily housing Developments. Housing assisted with HOME funds must meet all applicable codes and standards. Additionally, the Development must meet or exceed the requirements of the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or if no local building codes are in place then to the most recent version of the International Building Code.

(b) Developments involving New Construction will be limited to no more than 252 total units. This maximum unit limitation also applies to those Developments which involve a combination of Rehabilitation and New Construction. Developments that consist solely of acquisition and Rehabilitation or Reconstruction only may exceed the maximum unit restrictions. The minimum number of units shall be 8 units.

(c) This Program Activity is a CHDO-eligible activity.

(d) A Development receiving funds under this section shall have a LURA filed and recorded at the time of Loan closing and prior to any disbursement of HOME funds. The Department may require that a second LURA be filed and recorded if the restrictions to be placed on the Development exceed those of the federal requirements. Such second LURA shall include all of the requirements that exceed the federally required restrictions.

(e) In addition to the federal restrictions, Developments receiving funds under this section must meet the following rent and income restrictions:

(1) At least 20% of the total number of units in the Development must be restricted as HOME units;

(2) At least 5% of the total number of units in the Development must be set-aside for households at or below 30% of AMFI and must have rent restrictions at 30% of AMFI; and

(3) Developments receiving funds under the Persons with Disabilities set-aside are not required to meet the requirements under paragraph (1) or (2) of this subsection but must restrict all HOME units at 50% of AMFI or below and at least 5% of the HOME units at 30% of AMFI or below.

(f) Project funds awarded to Developments under this section shall be structured in the form of a loan or loans as follows:

(1) The interest rate may be as low as 2% provided all requirements of this chapter and §1.32 of this title are met. To the extent that Match in an amount of 5% or more of the HOME funds is provided, an interest rate as low as 0% may be requested;

(2) Unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than twenty (20) years and no greater than forty (40) years;

(3) The loan shall be structured with a regular monthly payment beginning at the end of the construction period and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cashflow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in §1.32 of this title. The Board may also approve, on a case-by-case basis, a cashflow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing; and

(4) The loan shall have a deed of trust with a lien position consistent with the principal amount of the loan in relation to the principal amounts of the other sources of financing. Notwithstanding the foregoing, the loan shall have a lien position that is superior to any other sources of financing that have soft repayment structures, non-amortizing balloon notes, are deferred forgivable loans or in which the lender has an Identity of Interest with any member of the development team. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing.

(g) Closing on the Loan shall be conditioned upon the occurrence of closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules, the HOME Final Rule, and to secure the interests of the Department.

(h) When Department funds have a first lien position, assurance of completion of the development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee. Development Owners also utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA.

(i) All HOME units required under this section shall be restricted as "floating" HOME units in accordance with the meaning ascribed by HUD. Development Owner must use its best efforts to distribute units reserved for Low Income Families, Very Low Income Families and Extremely Low Income Families among unit sizes in proportion to the distribution of unit sizes in the Property and to avoid concentration of Low Income Families, Very Low Income Families and Extremely Low Income Families in any area or areas of the Property.

§53.82. Multifamily (Rental Housing) Development (MFD) Administrative Requirements.

(a) Loan closing. The Development Owner must submit the following with a request for the preparation of loan closing:

- (1) Owner/General Contractor and owner/architect agreements;
- (2) Survey of the property reflecting all planned improvements that includes a certification to the Department, Development Owner, title company, and other lenders;
- (3) If layered with housing tax credits, a fully executed limited partnership agreement between the general partner and the tax credit investor entity (may be provided concurrent with closing);
- (4) Documentation of acceptance of HOME loan by other lenders and financing participants;
- (5) A budget that includes the amount of Project funds specifying the acquisition cost, construction costs, developer fees, other soft costs and Match to be provided. The sources of funds used to finance the Development. If the budget or sources of funds reflect material changes that may affect the financial feasibility of the Development, the Department may

request additional documentation to ensure that the Development continues to meet the requirements of §1.32 of this title;

(6) Verification of environmental clearance; and

(7) Any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(b) Disbursement of funds. The Development Owner must comply all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Development Owner's compliance with following requirements may be required with a request for disbursement.

(1) Except disbursements for acquisition and closing costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

(2) For hard construction costs, documentation of the total construction costs incurred and costs incurred since the last disbursement of funds. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703;

(3) If applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Development Owner's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) Developer fee schedule. Disbursement of Developer fees will be conditioned as follows:

(A) For Developments in which the Loan is secured by a first lien deed of trust against the property, 75% shall be disbursed in accordance with percent of construction completed (i.e. 75% of the total allowable fee will be multiplied by the percent completion) as documented by the construction contract and as may be verified by an

inspection by the Department and 25% shall be disbursed at the time that the property reaches an occupancy of 50% or at release of retainage, whichever is later; or

(B) For Developments in which the Loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits to finance development, Developer fees will not be reimbursed by the Department unless the other lenders and syndicator confirm in writing that they do not have an existing or planned agreement to govern the disbursement of Developer fees and expect that Department funds shall be used to fund Developer fees. Provided this requirement is met, developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) The Department may reasonably withhold any disbursement of developer fees if it is determined that is not progressing as necessary to meet Contract benchmarks or that cost overruns may put the Department's funds or completion within budget at risk. Once a reasonable alternative that is deemed acceptable by the Department has been provided, disbursement of the remaining fee may occur;

(7) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure requested. The Department may request Development Owner to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(8) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(9) Include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction, a final inspection is completed and clearance is issued by the Department, labor standards final wage compliance report, and receipt of certificates of occupancy for new construction or a certification of completion from the Development architect for rehabilitation;

(10) For final disbursement requests, submission of documentation required for Project completion reports; and

(11) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

SUBCHAPTER I COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)

§53.90. Application Procedures for Certification of Community Housing Development Organization (CHDO).

(a) An Applicant requesting certification as a CHDO must submit an application for CHDO certification in a form prescribed by the Department. The CHDO Application must be submitted with an Application for HOME funding under the CHDO Set-Aside and the CHDO must be a sponsor, developer, or owner of the Development within the meaning ascribed by HUD for the Program Activity being performed. An Applicant shall not receive more than one award of CHDO operating funds during the same fiscal year of the Department regardless of the number of Applications submitted. Any such award is limited to \$50,000. The Application must include documentation evidencing the requirements of 24 CFR Part 92 and this subsection:

(1) All Applications shall include the following documents as applicable which shall be reviewed for compliance with federal and state requirements:

(A) Bylaws with date of board approval;

(B) Charter; and

(C) Articles of Incorporation;

(2) The Applicant must be organized as a private nonprofit organization under the Texas Nonprofit Corporation Act or other state not-for-profit/nonprofit statute as evidenced by the documents required under paragraph (1) of this subsection;

(3) The Applicant must be registered with the Office of the Secretary of State to do business in the State of Texas;

(4) The Applicant must have the following tax status:

(A) A current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, or §501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective while certified as a CHDO; or

(B) Classification as a subordinate of a central organization nonprofit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and a private nonprofit organization's pending application for §501(c)(3) or (4) status cannot be used to comply with the tax status requirement under this subparagraph;

(5) The Applicant must have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by the documents required in paragraph (1) of this subsection or a business plan which outlines the CHDO's plans for developing affordable housing, providing services to each of the areas included within the service area, and internal operations;

(6) The Applicant must have a clearly defined service area that may encompass an entire "community" as defined in 24 CFR §92.2 under Community Housing Development Organization. The service area must be delineated in the entity's organizational documents;

(7) An Applicant must have the following capacity and experience:

(A) Conforms to the financial accountability standards of 24 CFR §84.21, "Standards of Financial Management Systems" as evidenced by:

(i) A notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department;

(ii) A certification from a Certified Public Accountant; or

(iii) A HUD-approved audit summary; and

(iv) A written narrative describing internal controls used to create financial duties and safe guard corporate assets; and

(v) A written narrative describing the conflict of interest policy governing employees and development activities and procurement; and

(vi) A written narrative describing the current corporation's financial structure can support housing development activities; and

(vii) A written narrative describing the organization's ability to manage additional rental development activities, if applicable;

(B) Demonstrated capacity for carrying out activities assisted with HOME funds, as evidenced by:

(i) Documentation that describes the experience of key staff members who have successfully completed projects similar to those to be assisted with HOME funds; or

(ii) Contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with HOME funds, to train appropriate key staff of the organization;

(C) Has a history of serving the low income residents of the city or county in which housing to be assisted with HOME funds is to be located as evidenced by:

- (i) Documentation of at least one year of experience providing services; or
- (ii) For newly created organizations formed by local churches, service or community organizations, a statement that documents that its parent organization has at least one year providing services; and
- (iii) The documentation provided in clause (i) or (ii) of this subparagraph must document and describe the organization's history (or its parent organization's history) of serving the city or county, such as, developing new housing, rehabilitating existing housing stock and managing housing stock, or delivering non-housing services that have had lasting benefits for those receiving services, such as counseling, food relief, or childcare facilities. The statement in the submission package must be signed by the president or other official of the organization;

(8) An Applicant must have an organizational structure that meets the federal requirements in 24 CFR §92.2. Compliance with this paragraph shall be evidenced by:

- (A) A written provision or statement in the organizations Bylaws, Charter or Articles of Incorporation;
- (B) An affidavit signed by the organization's Executive Director and notarized; and
- (C) A current roster of all Board of Directors, including names and mailing addresses. The required one-third low-income residents or elected representatives must be marked on list as such;

(9) The Applicant must provide a formal process for low-income individuals, including potential program beneficiaries to advise the organization in all of its decisions regarding the design, siting, development, and management of affordable housing projects. The formal process should include a system for community involvement in parts of the private nonprofit organization's service areas where housing will be developed, but which are not represented on its boards. Input from the low-income community is not met solely by having low-income representation on the board. The formal process must be in writing and approved or adopted by the private nonprofit organization, as evidenced by:

- (A) An organization's Bylaws; or
- (B) A written statement of operating procedures approved by the governing body. Statement must be original letterhead, signed by the Executive Director and evidence date of board approval; and
- (C) A Resolution with evidence of date of board approval;

(10) If the CHDO's creation was sponsored by a for-profit organization the for-profit entity's primary purpose cannot include the development or management of housing, as evidenced in the for-profit organization's Bylaws. If an Applicant is associated or has a relationship with a

for-profit entity or entities, the CHDO must prove it is not controlled, nor receives directions from individuals, or entities seeking profit as evidenced by the documentation required in paragraph (1) of this subsection or an memorandum of understanding or similar agreement; and

(11) CHDOs that are in partnership agreements associated with the Development must maintain effective Control and decision making control over the Development. All legally binding ownership and/or partnership agreements must clearly state the CHDO's role in the Development, as evidenced by an affidavit from the CHDO and any other developer, general partner, or special limited partner (except for entities related to a tax credit investor limited partner) that the CHDO will maintain effective Control and decision making control over the Development. In addition, the CHDO or entity wholly owned by the CHDO must receive at least 50% of the cashflow from the property (for multifamily developments) or 50% of the developer fee which must also be evidenced by the affidavit.

(b) An Application for CHDO Certification will only be accepted if submitted with an Application to the Department for HOME funds. If all requirements under this section are met, the Applicant will be certified as a CHDO upon the award of HOME funds by the Department. A new Application for CHDO certification must be submitted to the Department with each new Application for HOME funds under the CHDO Set-Aside.

§53.91. Recertification of Community Housing Development Organization (CHDO).

A CHDO must be recertified every twelve (12) months during the Contract Period of any Contract with a commitment of CHDO funds with the first recertification application submitted at least thirty (30) days prior to twelve (12) months from the beginning of the contract period. Failure to be recertified as a CHDO may result in the Department withholding any draws until the CHDO obtains the recertification. Such recertification application shall include:

- (1) Submission of a CHDO Application to document compliance with this section; or
- (2) An affidavit from the CHDO that it continues to meet all of the requirements of this section and that there have been no changes in the organizational structure or Board membership that would violate the federal requirements in 24 CFR Part 92; and
- (3) A legal opinion from the CHDO's legal counsel that the organization continues to meet the federal definition of a CHDO in 24 CFR §92.2.