

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of
10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, 10 TAC
§1.406, Fidelity Bond Requirements

Disclaimer

Attached is a draft of proposed 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, 10 TAC §1.406, Fidelity Bond Requirements. This draft was approved by the TDHCA Governing Board on November 6, 2025. This action entails repeal of the current rule and replacement with a new rule. This document, including its preamble, is expected to be published in November 21, 2025, edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment and can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

In compliance with §2001.023, Texas Government Code, a summary of the proposed rule follows:

Section 1.406, Fidelity Bond Requirements. The Department is required to assure that fiscal control and accounting procedures for federally funded entities will be established to assure the proper disbursement and accounting for the federal funds paid to the state that are passed to these entities. Therefore, the Department requires program Subrecipients to maintain adequate fidelity bond coverage. A fidelity bond is a bond indemnifying the Subrecipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more of its employees, officers, or other persons holding a position of trust. The current rule requires that the fidelity bond be for a minimum of 5% of the Contract amount. However, some activities in the Department that operate on a reservation system do not have any fund amount identified in the contract with the subrecipient which has resulted in those entities not having a clear requirement for their fidelity bond. Staff has identified this as an area of risk, and as such is recommending that the rule be revised to provide a minimum, regardless of Contract type, of \$50,000. An entity would have to provide coverage in an amount that is the greater of 10% of the Contract Amount, or \$50,000. This rule will be returned to the Board for final adoption.

Public Comment

Public Comment Period: Start: 8:00 a.m. Austin local time on November 21, 2025
End: 5:00 p.m. Austin local time on December 21, 2025

Comments received after 5:00 p.m. Austin local time on December 21, 2025, will not be accepted. Written comments may be submitted electronically within the designated public comment period to:
brooke.boston@tdhca.state.tx.us.

Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment. Please be aware that all comments submitted to the TDHCA will be considered public information.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Departamento de Vivienda y Asuntos Comunitarios de Texas

Borrador aprobado por la Junta Directiva del TDHCA

respecto a la sección [§] 1.406 [“Requisitos de bonos de fidelidad”] del subcapítulo D [“Directriz uniforme para receptores de fondos federales y estatales”] del capítulo 1 del título 10 del Código Administrativo de Texas (TAC)

Descargo de responsabilidad

Se adjunta un borrador de la propuesta para la sección [§] 1.406 [“Requisitos de bonos de fidelidad”] y para el subcapítulo D [“Directriz uniforme para receptores de fondos federales y estatales”] del capítulo 1 del título 10 del Código Administrativo de Texas (TAC). Este borrador recibió aprobación por parte de la Junta Directiva del TDHCA el 6 de noviembre de 2025. Esta acción implica la derogación de la regla actual y su sustitución por una nueva. Se espera que este documento, incluyendo su preámbulo, se publique en la edición del *Texas Register* del 21 de noviembre de 2025. Esa versión publicada constituirá la versión oficial para fines de comentarios públicos y se puede encontrar en el siguiente enlace: <https://www.sos.texas.gov/texreg/index.shtml>.

De conformidad con la sección [§] 2001.023 del Código de Gobierno de Texas, se incluye a continuación un resumen de la regla propuesta:

Se le exige al Departamento garantizar que se establezcan procedimientos de control y contabilidad fiscal para entidades financiadas con fondos federales con el fin de asegurar el desembolso y la contabilidad adecuados de los fondos federales pagados al estado que se transfieren a dichas entidades. Por lo tanto, el Departamento exige que los receptores secundarios de programas mantengan una cobertura suficiente de bonos de fidelidad. Un bono de fidelidad es aquel que indemniza al receptor secundario contra pérdidas producidas por fraude o la falta de integridad, honestidad o fidelidad de uno o más de sus empleados, directivos u otras personas que ocupen una posición de confianza. La regla actual exige que el bono de fidelidad sea por un mínimo del 5 % del monto del contrato. Sin embargo, algunas actividades del Departamento que operan bajo un sistema de reservas no tienen ningún monto de fondos identificado en el contrato con el receptor secundario, lo que ha provocado que dichas entidades no tengan un requisito claro para su bono de fidelidad. El personal ha identificado esto como un área de riesgo y, como tal, recomienda que se modifique la regla para establecer un mínimo de \$50,000, independientemente del tipo de contrato. Una entidad tendría que brindar cobertura por un monto equivalente al 10 % del monto del contrato o \$50,000, lo que sea mayor. Esta regla será devuelta a la Junta para su adopción final.

Comentarios del público

Periodo de comentarios del público: Inicio: 8:00 a. m., hora local de Austin, del 21 de noviembre de 2025

Finalización: 5:00 p. m., hora local de Austin, del 21 de diciembre de 2025

No se aceptarán los comentarios que se reciban después de las 5:00 p. m., hora local de Austin, del 21 de diciembre de 2025. Los comentarios por escrito pueden enviarse de manera electrónica dentro del período designado de comentarios del público a brooke.boston@tdhca.state.tx.us.

Se anima a quienes formulen comentarios públicos a que hagan referencia al borrador de la regla, política o plan específico relacionado con su comentario, así como una referencia o cita específica asociada a cada comentario. Tenga en cuenta que todos los comentarios enviados al TDHCA se considerarán información pública.

DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS

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Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.406, Fidelity Bond Requirements

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.406 Fidelity Bond Requirements. The purpose of the proposed repeal is to eliminate the outdated rule and replace it simultaneously with a new rule that provides greater risk mitigation for the Department as it relates to fidelity bond coverage of the Department's subrecipients.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for repeal because there are no costs associated with the repeal.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: fidelity bond requirements.
2. The repeal does not require a change in work that creates new employee positions nor does it generate savings that would eliminate any employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal is not considered to expand an existing regulation.
7. The repeal does not increase the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule, and greater risk mitigation for the Department. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period will be held November 21 to December 21, 2025, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.texas.gov. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, December 21, 2025.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repeal affects no other code, article, or statute.

§1.406. Fidelity Bond Requirements

Attachment 2: Preamble, including required analysis, for proposed new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.06 Fidelity Bond Requirements.

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.406 Fidelity Bond Requirements. The purpose of the proposed rule is to eliminate the outdated rule and replace it simultaneously with a new rule that provides greater risk mitigation for the Department as it relates to fidelity bond coverage of the Department's subrecipients.

Tex. Gov't Code §2001.0045(b) does apply to the rule proposed because there are no costs associated with this action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The rule does not create or eliminate a government program but relates to changes to an existing activity: fidelity bond requirements.
2. The rule does not require a change in work that creates new employee positions nor does it generate savings that would eliminate any employee positions.
3. The new section does not require additional future legislative appropriations.
4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new section is not creating a new regulation.
6. The new section does expand on an existing regulation.
7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that it will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be a rule that provides clarity around fidelity bond requirements and better mitigates Department risk. There may be minimal costs to some program participant organizations that could be readily absorbed by the administrative funds provided by TDHCA.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the section will not have costs to the state to implement. No additional funds will be required.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period will be held November 21 to December 21, 2025, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.texas.gov. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, December 21, 2025.

STATUTORY AUTHORITY. The new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new section affects no other code, article, or statute.

§1.406 Fidelity Bond Requirements

The Department is required to assure that fiscal control and accounting procedures for federal and state-funded entities will be established to assure the proper disbursement and accounting for the federal funds paid to the state. In compliance with that assurance the Department requires program Subrecipients administering federal or state funds to maintain adequate fidelity bond coverage. A fidelity bond is a bond indemnifying the Subrecipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more of its employees, officers, or other persons holding a position of trust.

(1) In administering Contracts, Subrecipients shall observe their regular requirements and practices with respect to bonding and insurance. In addition, the Department may impose bonding and insurance requirements by Contract.

(2) If a Subrecipient is a non-governmental organization, the Department requires an adequate fidelity bond. If the amount of the fidelity bond is not prescribed in the contract, the fidelity bond must be for at least the greater of \$50,000 or a minimum of 510% of the Contract amount. In the event that the Subrecipient is administering a Reservation Agreement, and the amount of funds committed under the Contract exceeds \$500,000, the amount of the fidelity bond must be increased to ensure that the amount meets or exceeds 10% of total funds reserved. The bond must be obtained from a company holding a certificate of authority to issue such bonds in the State of Texas.

(3) The fidelity bond coverage must include all persons authorized to sign or counter-sign checks or to disburse ~~sizable amounts of cash~~ cash in an amount that exceeds \$250. Persons who handle only ~~petty cash~~ (amounts of less than \$250) need not be bonded, nor is it necessary to bond officials who are authorized to sign payment vouchers, but are not authorized to sign or counter-sign checks or to disburse cash.

(4) The Subrecipient must receive an assurance letter from the bonding company or agency stating the type of bond, the amount and period of coverage, the positions covered, and the annual cost of the bond. Compliance must be continuously maintained thereafter. A copy of the actual policy shall remain on file with the Subrecipient and shall be subject to monitoring by the Department.

(5) Subrecipients are responsible for filing claims against the fidelity bond when a covered loss is discovered.

(6) The Department may take any one or more of the actions described in Chapter 2, of this Part, relating to Enforcement in association with issues identified as part of filing claims against the fidelity bond.