

## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

## TDHCA Governing Board Approved Draft of

## 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule

**Disclaimer**

Attached is a proposed rule action for 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule. This four-year review was approved by the TDHCA Governing Board on January 15, 2026. This document, including its preamble, is expected to be published in the February 6, 2026, 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 action follows:**

This rule lays out the parameters for administration of the Texas First Time Homebuyer Program. There have recently been instances where the Department's lien status on loans in the portfolio has been jeopardized by lien holders with smaller liens, such as liens held by Home Owner Associations (HOAs). When those lien holders pursue foreclosure it puts the Department's larger loan at risk of non-repayment.

To prevent this from occurring a policy has been drafted in the rule that specifies that a loan made by the Department must be: 1) first lien if it is the largest loan; or 2) the Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan is at least 55% of the combined repayable or amortized loans (however, liens related to other subsidized funds provided in the form of grants and non-amortizing mortgage loans, such as deferred payment or forgivable loans, must be subordinate to the Department's mortgage); and For real property encumbered by deed restrictions governed by a property owners' association or homeowners' association, the association shall subordinate its assessment liens in the deed restrictions to the Department's Mortgage Loan.

Therefore, the rule will be made available for public comment from February 6, 2026, to March 8, 2026, and returned to the Board for final approval.

Note that while the submission to the *Texas Register* does not require the text of the rule to be included in the submission or publication, staff has included the text of the rule for the public comment.

**Public Comment**

**Public Comment Period:** Start: 8:00 a.m. Austin local time on February 6, 2026  
End: 5:00 p.m. Austin local time on March 8, 2026

Comments received after 5:00 p.m. Austin local time on March 8, 2026, 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 al capítulo 27 [“Regla para el Programa de Compradores Primerizos de Vivienda en Texas”] del título 10 del Código Administrativo de Texas (TAC)

**Descargo de responsabilidad**

Se adjunta una propuesta de acción reglamentaria respecto al capítulo 27 [“Regla para el Programa de Compradores Primerizos de Vivienda en Texas”] del título 10 del Código Administrativo de Texas (TAC). Esta revisión cada cuatro años recibió aprobación por parte de la Junta Directiva del Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA) el 15 de enero de 2026. Se espera que este documento, incluyendo su preámbulo, se publique en la edición del *Texas Register* del 6 de febrero de 2026. 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 acción propuesta:

Esta regla establece los parámetros para la administración del Programa de Compradores Primerizos de Vivienda en Texas. Recientemente, ha habido casos en los que la situación de gravámenes sobre préstamos en la cartera del Departamento se ha visto comprometida por acreedores prendarios con gravámenes más pequeños, tales como los gravámenes mantenidos por asociaciones de propietarios de vivienda (HOA). Cuando esos acreedores prendarios intentan ejecutar una hipoteca, ponen en riesgo de incumplimiento de reembolsos de préstamos más grandes del Departamento.

Para evitar que esto suceda, se ha redactado una política en la regla que especifica que un préstamo otorgado por el Departamento debe tener las siguientes características: 1) ser una hipoteca en primer grado si es el préstamo más grande; o 2) el Departamento puede aceptar una posición subordinada respecto al gravamen si el monto del capital original del préstamo hipotecario apalancado es al menos el 55 % de los préstamos reembolsables o amortizados combinados (sin embargo, los gravámenes relacionados con otros fondos subsidiados que se facilitan en modalidad de subvenciones y préstamos hipotecarios no amortizables, tales como préstamos a plazos o condonables, deben estar subordinados a la hipoteca del Departamento); y para bienes inmuebles gravados por restricciones de escritura regidas por una asociación de dueños de propiedades o una asociación de propietarios de vivienda, la asociación subordinará sus gravámenes de valoración en las restricciones de escritura al préstamo hipotecario del Departamento.

Por lo tanto, la regla estará disponible para comentarios del público desde el 6 de febrero de 2026 hasta el 8 de marzo de 2026, y se remitirá a la Junta para su aprobación definitiva.

Tenga en cuenta que, si bien la presentación al *Texas Register* no exige que el texto de la regla se incluya en la presentación o publicación, el personal ha incluido el texto de la regla para los comentarios del público.

**Comentarios del público**

**Periodo de comentarios del público:** Inicio: 8:00 a. m., hora local de Austin, del 6 de febrero de 2026  
Finalización: 5:00 p. m., hora local de Austin, del 8 de marzo de 2026

No se aceptarán los comentarios que se reciban después de las 5:00 p. m., hora local de Austin, del 8 de marzo de 2026. Los comentarios por escrito pueden enviarse de manera electrónica dentro del período designado de comentarios del público a [brooke.boston@tdhca.state.tx.us](mailto: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 the proposed repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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 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.**

1. Robert Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous proposed adoption making changes to the rule governing the Texas First Time Homebuyer Program Rule.
2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does 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 action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Texas First time Homebuyer Program.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect this 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 this 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 nor 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 will be in effect there will 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 repealed section would be an updated rule that better protects the Department's liens on applicable properties. There will be no 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.** The Department requests comments on the repeal. The public comment period will be held February 6, 2026, to March 8, 2026, to receive input on the proposed actions. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at [brooke.boston@tdhca.texas.gov](mailto:brooke.boston@tdhca.texas.gov). **ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, March 8, 2026.**

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

## **10 TAC Chapter 27, Texas First Time Homebuyer Program Rule**

§27.1 Purpose

§27.2 Definitions

§27.3 Restrictions on Residences Financed and Applicant

§27.4 Occupancy and Use Requirements

§27.5 Application Procedure and Requirements for Commitments by Mortgage Lenders

§27.6 Criteria for Approving Participating Mortgage Lenders

§27.7 Resale of the Residence

§27.8 Conflicts with Bond Indentures and Applicable Law

§27.9 Waiver

**Attachment B: Preamble, including required analysis, for proposed new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule. The purpose of the proposed new rule is to make changes that address lien status for homes purchased under the program. There have recently been instances where the Department's lien status on loans in the portfolio has been jeopardized by lien holders with smaller liens; when those lien holders pursue foreclosure it puts the Department's larger loan at risk of non-repayment.

To prevent this from occurring a policy has been drafted in the rule that specifies that a loan made by the Department must be: 1) first lien if it is the largest loan; or 2) the Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan is at least 55% of the combined repayable or amortized loans (however, liens related to other subsidized funds provided in the form of grants and non-amortizing mortgage loans, such as deferred payment or forgivable loans, must be subordinate to the Department's mortgage); and 3) For real property encumbered by deed restrictions governed by a property owners' association or homeowners' association, the association shall subordinate its assessment liens in the deed restrictions to the Department's Mortgage Loan.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted, because it meets the exceptions described under items (c)(4) and (9) of that section. The rules relate to a program through which the Department accesses federal bond authority to provide affordable housing opportunities to low income Texans under Treasury Regulations §143. The rule also ensures compliance with Tex. Gov't Code, Subchapter MM, Texas First-Time Homebuyer Program. Even though excepted, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

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. Robert Wilkinson, Executive Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rules that govern the Texas First Time Homebuyer Program.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The new rule 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 rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The new rule does not increase or decrease the number of individuals to whom this rule applies; and
8. The new rule 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.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the general program guidelines for the First Time Homebuyer Program. The beneficiaries of this program are individual households, therefore no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a revision to a rule that applies to a program for which individual households are the beneficiaries, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor 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 rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates to homebuyer assistance to individual households, not limited to any given community or area within the state; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

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 sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a more updated rule better protecting the Department's lien status. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule has already been in existence.

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 sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

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 February 6, 2026, to March 8, 2026, to receive input on the proposed actions. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at [brooke.boston@tdhca.texas.gov](mailto:brooke.boston@tdhca.texas.gov). ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, March 8, 2026.

STATUTORY AUTHORITY. The rule review is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

## **CHAPTER 27 TEXAS FIRST TIME HOMEBUYER PROGRAM RULE**

### **§27.1 Purpose**

(a) The purpose of the Texas First Time Homebuyer Program is to facilitate the origination of single-family Mortgage Loans for eligible first time Homebuyers, and to make available down payment and closing cost assistance to eligible Homebuyers. The Texas First Time Homebuyer Program is administered in accordance with Texas Government Code, Chapter 2306. Chapter 20 of this title (relating to the Single Family Programs Umbrella Rule) does not apply to the activities under this chapter, except if these activities are combined with activities subject to Chapter 20 of this title.

(b) Assistance under this Program is dependent, in part, on the availability of funds. The Department may cease offering all or a part of the assistance available under the program at any time and in its sole discretion.

### **§27.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Participation Packet indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 2 of this title (relating to Enforcement).

- (1) Applicable Median Family Income--The Department's determination, as permitted by Texas Government Code, §2306.123, of the median income of an individual or family for an area using a source or methodology acceptable under federal law or rule. The Applicable Median Family Income, as updated from time to time, may be found on the Department's website in the "Combined Income and Purchase Price Limits Table."
- (2) Applicant--A person or persons applying for financing of a Mortgage Loan under the Program.
- (3) Areas of Chronic Economic Distress--Those areas in the state, whether one or more, designated from time to time as areas of chronic economic distress by the state and approved by the U.S. Secretaries of Treasury and Housing and Urban Development, respectively, pursuant to §143(j) of the Code.
- (4) Average Area Purchase Price--With respect to a Residence financed under the Program, the average purchase price of single-family residences in the statistical area in which the Residence is located which were purchased during the most recent twelve (12) month period for which statistical information is available, as determined in accordance with §143(e) of the Code.
- (5) Code--The Internal Revenue Code of 1986, as amended from time to time.
- (6) Contract for Deed Exception--The exception for certain Mortgage Loan eligibility requirements, as provided in the Master Mortgage Origination Agreement, available with respect to a principal residence owned under a contract for deed by a person whose family income is not more than 50% of the area's Applicable Median Family Income.
- (7) Federal Housing Administration--A division of the U.S. Department of Housing and Urban Development, also known as FHA.
- (8) First Time Homebuyer--A person who has not owned a home during the three (3) years preceding the date on which an application under this program is filed. A person will be considered to have owned a home if the person had a present ownership interest in a home during the three (3) years preceding the date on which the application was filed. In the event there is more than one person applying with respect to a home, each Applicant must separately meet this three year requirement.
- (9) Homebuyer--An Applicant that is approved by the Program and purchases a Residence.
- (10) Master Mortgage Origination Agreement--The contract between the Department and a Mortgage Lender, together with any amendments thereto, setting forth certain terms and conditions relating to the

origination and sale of Mortgage Loans by the Mortgage Lender and the financing of such Mortgage Loans by the Department.

(11) Mortgage Lender--the entity, as defined in §2306.004 of the Tex. Gov't Code, that is participating in the Program and signatory to the Master Mortgage Origination Agreement.

(12) Participation Packet--The application submitted to the Department by the proposed Mortgage Lender to participate in the Program.

(13) Program--The Texas First Time Homebuyer Program.

(14) Purchase Price Limit--The Purchase Price Limits published and updated from time to time in the "Combined Income and Purchase Price Limits Table" found on the Department's website equal to 90% of the Average Area Purchase Price, subject to certain exceptions for Targeted Area Loans.

(15) Qualified Veteran Exemption to First Time Homebuyer Requirement--A qualified veteran who has not previously received financing as a First Time Homebuyer through a single family mortgage revenue bond program is exempt from the requirement to be a First Time Homebuyer. The veteran must certify that he or she has not previously obtained a Mortgage Loan financed by single family mortgage revenue bonds, and is utilizing the veteran exception set forth in §143(d)(2)(D) of the IRS Code. Qualified veterans must also complete a worksheet evidencing qualification as a veteran and provide copies of discharge papers.

(16) Regulations--The applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

(17) Residence--A dwelling in Texas in which an Applicant intends to reside as the Applicant's principal living space. This is intended to have the same meaning as Home as defined in §2306.1071 of the Tex. Gov't Code.

(18) Rural Housing Service--A division of the United States Department of Agriculture, also known as RHS.

(19) Targeted Area--A qualified census tract, as determined in accordance with §6(a)103A-(2)(b)(4) of the Regulations or any successor regulations thereto, or an Area of Chronic Economic Distress. Applicants purchasing in Targeted Areas may have higher income and purchase price limits as set forth in the "Combined Income and Purchase Price Limits Table" found on the Department's website.

(20) Targeted area exemption to First time Homebuyer Requirement--Applicants purchasing homes in targeted areas financed through the program are exempt from the requirement to be a First Time Homebuyer and income and purchase price limits may be higher as found in the "Combined Income and Purchase Price Limits Table" located on the Department's website.

(21) United States Department of Veterans Affairs--Also known as VA.

### **§27.3 Restrictions on Residences Financed and Applicant**

(a) Type of Residence and Number of Units. To be eligible for assistance under the Program an Applicant must apply with respect to a Residence that is either a new or existing single family residence, new or existing condominium or townhome, or manufactured housing that has been converted to real property in accordance with the Texas Occupations Code, Chapter 1201 or FHA guidelines, as required by the Department. A duplex may be financed under the Program as long as one unit of the duplex is occupied by the Applicant as his or her Residence, and the duplex was first occupied for residential purposes at least five years prior to the closing of the Mortgage Loan.

(b) Homebuyer Education. Each Applicant must complete a Department approved pre-purchase homebuyer education course.

(c) Income Limits. An Applicant applying for a Mortgage Loan must meet Applicable Median Family Income requirements.

(d) Down Payment Assistance. An Applicant meeting the Applicable Median Family Income requirements in subsection (c) of this section may qualify for down payment and closing cost assistance in connection with the Mortgage Loan on a first come, first served basis, subject to availability of funds.

(e) Residential Property Standards. The Residence must meet all standards required by the State of Texas, local jurisdiction, and as required by the Federal Mortgage Lender.

(f) Lien Position Requirements.

(1) A Mortgage Loan made by the Department shall be secured by a first lien on the real property if the Department's Mortgage Loan is the largest Mortgage Loan secured by the real property; or

(2) The Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan is at least 55% of the combined repayable or amortized loans; however, liens related to other subsidized funds provided in the form of grants and non-amortizing Mortgage Loans, such as deferred payment or Forgivable Loans, must be subordinate to the Department's payable Mortgage Loan; and

(3) For real property encumbered by deed restrictions governed by a property owners' association or homeowners' association, the association shall subordinate its assessment liens in the deed restrictions to the Department's Mortgage Loan.

#### **§27.4 Occupancy and Use Requirements**

(a) Occupancy requirement. The Homebuyer must occupy the property within a reasonable time (not to exceed 60 days) after the date of closing as his or her Residence.

(b) Use for a business. Homebuyer may not use more than 15% of the Residence in a trade or business (including childcare services) on a regular basis for compensation. If the Residence is to be used, in part, for a trade or business, a schematic drawing from an appraiser must be provided.

(c) Homebuyer may not use the Residence, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home, and shall continue to occupy the Residence as Homebuyer's principal living space, unless waived by the Executive Director or their designee, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Homebuyer's control.

#### **§27.5 Application Procedure and Requirements for Commitments by Mortgage Lenders**

(a) An Applicant seeking assistance under the Program must first contact a participating Mortgage Lender. A list of participating Mortgage Lenders may be obtained on the Department's website or by contacting the Department.

(b) Applicant shall complete an application with a participating Mortgage Lender.

(c) Application Fees. Fees that may be collected by the Mortgage Lender from the Applicant relating to a Mortgage Loan include:

(1) an appropriate, as determined by the Department, origination fee and/or buyer/seller points; and  
(2) all usual and reasonable settlement or financing costs that are permitted to be so collected by FHA, RHS, VA, Freddie Mac or Fannie Mae, as applicable, and other applicable laws, but only to the extent such charges do not exceed the usual and reasonable amounts charged in the area in which the Residence is located. Such usual and reasonable settlement or financing costs shall include an application fee as determined by the Department, the total estimated costs of a credit report on the Applicants and an appraisal of the property to be financed with the Mortgage Loan, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and expenses, credit report fees, FHA insurance premiums, private Mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS guaranty fees, hazard or flood insurance premiums, abstract fees, tax service fees, recording or registration fees, escrow fees, and file preparation fees.

(d) The Department will determine from time to time, a schedule of fees and charges necessary for expenses and reserves of the housing finance division as set forth in a Board resolution.

(e) The Mortgage Lender must register the Mortgage Loan in accordance with the Department's published procedures.

### **§27.6 Criteria for Approving Participating Mortgage Lenders**

(a) To be approved by the Department for participation in the program, a Mortgage Lender must meet the requirements in the Participation Packet to be a qualified Mortgage Lender as specified by:

- (1) FHA;
- (2) RHS;
- (3) VA; or
- (4) be a lender currently participating in the conventional home lending market for loans originated in accordance with Fannie Mae's and/or Freddie Mac's requirements.

(b) As a condition for participation in the Program, a qualified Mortgage Lender must:

- (1) agree to originate Mortgage Loans and assign those loans and related Mortgages and servicing to the Department's master servicer;
- (2) originate, process, underwrite, close and fund originated loans; and
- (3) be an approved Mortgage Lender with the Program's master servicer.

### **§27.7 Resale of the Residence**

Mortgage Loans that are financed with the proceeds of tax-exempt bonds, or for which a Mortgage Credit Certificate has been or will be issued, will be subject to federal income tax recapture provisions. Assumption of a Mortgage Loan is allowed under the Program if the new owner meets the Program requirements at the time of the sale of the Residence.

### **§27.8 Conflicts with Bond Indentures and Applicable Law**

All assistance provided under the Program is funded through or facilitated by the Department's mortgage revenue bond indentures and is subject to changes in the mortgage revenue bond indentures and applicable law. If there is a conflict between this chapter and any bond indenture or applicable law regarding the use of the funds from mortgage revenue bonds, the mortgage revenue bond indenture or applicable law shall control.

### **§27.9 Waiver**

The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the rules governing this Program, except 10 TAC §27.8, if the Board finds that waiver is appropriate to fulfill the purposes or polices of Texas Government Code, Chapter 2306.