

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, including §1.401
through §1.411

Disclaimer

Attached is a draft of proposed 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, including §1.401 through §1.411. This draft was approved by the TDHCA Governing Board on June 13, 2024. This action entails an amendment to the rule. This document, including its preamble, is expected to be published in June 28 2024, 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:

10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, including §1.401 through §1.411, has been identified by staff as needing revisions. Most of the sections of this rule were last adopted or amended in 2021. Changes are summarized:

- §1.401. Effective Date and Definitions: Removes the definition for the Executive Award Review and Advisory Committee (EARAC); updates citations in the definition for Subrecipient; and revises the definition for Equipment to bring it into alignment with new federal changes to 2 CFR Part 200.
- §1.402. Cost Principles and Administrative Requirements: clarifies that the policies a Subrecipient puts in place to serve as controls on separation of duties must be not only adopted, but continued for the term of the contract. Clarified that certain CSBG subrecipients do not have to follow TXMGS.
- §1.403. Single Audit Requirements: Revises the amount of funds handled by the Subrecipient that would trigger the requirement for a Single Audit from \$750,000 to \$1 million to bring this policy into consistency with new federal changes to 2 CFR Part 200; and updates references to the previous EARAC process.
- §1.404. Purchase and Procurement Standards: Clarifies the request process for a Subrecipient to procure a vehicle.
- §1.405. Bonding Requirements: Adds the HOME-ARP program to the programs to which this section is applicable.
- §1.406. Fidelity Bond Requirements: Updates the amount of fidelity bond coverage from \$10,000 to 5% of the contract amount.
- §1.407. Inventory Report: Adjusts the amount of supplies that must be reported in the inventory from \$5,000 to \$10,000 to comply with new federal changes to 2 CFR Part 200.
- §1.408. Travel: clarifies that the policies a Subrecipient puts in place for travel but not only be adopted, but continued for the term of the contract.
- §1.409. Records Retention: Adds the HOME-ARP program to the programs to which this section is applicable.
- §1.410. Determination of Alien Status for Program Beneficiaries: Clarifies that this section does apply to vendors procured by the Department for services, if those services involve qualification of eligibility. Added LIHWAP to programs that must follow this subsection.
- §1.411. Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code: clarifies the process for denials, and specifies 'calendar' days.

Public Comment

Public Comment Period: Start: 8:00 a.m. Austin local time on June 28, 2024
End: 5:00 p.m. Austin local time on July 28, 2024

Comments received after 5:00 p.m. Austin local time on July 28, 2024, 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

Street Address: 221 East 11th Street, Austin, TX 78701
Mailing Address: PO Box 13941, Austin, TX 78711-3941
Main Number: 512-475-3800 Toll Free: 1-800-525-0657
Email: info@tdhca.state.tx.us Web: www.tdhca.state.tx.us

Departamento de Vivienda y Asuntos Comunitarios de Texas
Borrador aprobado por la Junta Directiva del TDHCA
del subcapítulo D [“Directriz uniforme para receptores de fondos federales y estatales”], incluyendo las secciones (§§) 1.401 a 1.411, del capítulo 1 del título 10 del Código Administrativo de Texas (TAC)

Descargo de responsabilidad

Se adjunta un borrador de la propuesta para el subcapítulo D [“Directriz uniforme para receptores de fondos federales y estatales”], incluyendo las secciones (§§) 1.401 a 1.411, del capítulo 1 del título 10 del Código Administrativo de Texas (TAC). Este borrador se aprobó por parte de la Junta Directiva del TDHCA el 13 de junio de 2024. Esta medida supone una modificación de la regla. Se espera que este documento, incluyendo su preámbulo, se publique en la edición del *Texas Register* del 28 de junio de 2024. 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:

El personal ha identificado que el subcapítulo D [“Directriz uniforme para receptores de fondos federales y estatales”], incluyendo las secciones (§§) 1.401 a 1.411, del capítulo 1 del título 10 del Código Administrativo de Texas (TAC) necesita cambios. La mayoría de las secciones de esta regla se adoptaron o modificaron por última vez en el año 2021. Los cambios se resumen a continuación:

- §1.401. Sección (§) 1.401 [“Fecha de vigencia y definiciones”]: elimina la definición de Comité Consultivo Ejecutivo de Revisiones y Adjudicaciones (EARAC), actualiza las citas en la definición de “Receptor secundario” y modifica la definición de “Equipo” para armonizarla con los nuevos cambios federales a la parte 200 del título 2 del Código de Reglamentos Federales (CFR).
- §1.402. Sección (§) 1.402 [“Principios de costos y requisitos administrativos”]: aclara que las políticas que un receptor secundario implementa para servir como controles sobre la separación de funciones no solo deben adoptarse, sino que deben continuarse durante la vigencia del contrato. Se aclaró que determinados receptores secundarios del Programa de Subvenciones en Bloque para Servicios Comunitarios (CSBG) no tienen que acatar TXMGS.
- §1.403. Sección (§) 1.403 [“Requisitos de auditorías únicas”]: modifica el monto de fondos gestionados por el receptor secundario, que activaría el requisito de una auditoría única de \$750,000 a \$1 millón con el fin de que esta política sea coherente con los nuevos cambios federales a la parte 200 del título 2 del Código de Reglamentos Federales (CFR), y actualiza las referencias al proceso EARAC anterior.
- §1.404. Sección (§) 1.404 [“Normas de compras y adquisiciones”]: aclara el proceso de solicitud para que un receptor secundario adquiera un vehículo.
- §1.405. Sección (§) 1.405 [“Requisitos de bonos”]: agrega el Programa HOME-ARP a los programas a los que se aplica esta sección.
- §1.406. Sección (§) 1.406 [“Requisitos de bonos de fidelidad”]: actualiza el monto de la cobertura de bonos de fidelidad de \$10,000 al 5 % del monto del contrato.
- §1.407. Sección (§) 1.407 [“Informe de inventario”]: ajusta la cantidad de suministros que deben declararse en el inventario, de \$5,000 a \$10,000, con el fin de acatar los nuevos cambios federales a la parte 200 del título 2 del Código de Reglamentos Federales (CFR).

- §1.408. Sección (§) 1.408 [“Viajes”]: aclara que las políticas que un receptor secundario establece para viajes no solo se adoptarán, sino que continuarán durante la vigencia del contrato.
- §1.409. Sección (§) 1.409 [“Conservación de registros”]: agrega el Programa HOME-ARP a los programas a los que se aplica esta sección.
- §1.410. Sección (§) 1.410 [“Determinación de la condición de extranjero para beneficiarios de programas”]: aclara que esta sección se aplica a proveedores contratados por el Departamento para prestación de servicios si aquellos servicios implican calificación de elegibilidad. Se agregó el Programa de Asistencia con el Servicio de Agua para Grupos Familiares de Bajos Ingresos (LIHWAP) a los programas que deben acatar esta subsección.
- §1.411. Sección (§) 1.411 [“Administración de subvenciones en bloque en virtud del capítulo 2105 del Código de Gobierno de Texas”]: aclara el proceso de denegaciones y especifica los días ‘calendario’.

Comentarios del público

Periodo de comentarios del público: Inicio: 8:00 a. m., hora local de Austin, del 28 de junio de 2024
Finalización: 5:00 p. m., hora local de Austin, del 28 de julio de 2024

No se aceptarán los comentarios que se reciban después de las 5:00 p. m., hora local de Austin, del 28 de julio de 2024. 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

Dirección: 221 East 11th Street, Austin, TX 78701

Dirección de correspondencia: P.O. Box 13941, Austin, TX 78711-3941

Número principal: 512-475-3800 Número gratuito: 1-800-525-0657

Correo electrónico: txhaf@tdhca.state.tx.us Web: www.tdhca.state.tx.us

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, including §1.401 through §1.411

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, including §1.401 through §1.411. The purpose of the proposed repeal is to eliminate the outdated rule and replace it simultaneously with a new more germane rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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: how state and federal requirements are applied to recipients of Department funds.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing 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 will not expand, limit, or repeal an existing regulation.
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 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. 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. The public comment period will be held June 28, 2024 to July 28, 2024, 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.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, July 28, 2024.

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.

Subchapter D, Uniform Guidance for Recipients of Federal and State Funds

§1.401. Effective Date and Definitions

§1.402. Cost Principles and Administrative Requirements

§1.403. Single Audit Requirements

§1.404. Purchase and Procurement Standards

§1.405. Bonding Requirements

§1.406. Fidelity Bond Requirements

§1.407. Inventory Report

§1.408. Travel

§1.409. Records Retention

§1.410. Determination of Alien Status for Program Beneficiaries

§1.411. Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code

Attachment 2: Preamble, including required analysis, for proposed new §1.21, Action by Department if Outstanding Balances Exist

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, including §1.401 through §1.411. The purpose of the new section is to reflect changes to federal regulations, make minor procedural revisions, remove the prior process for the Executive Award Review and Advisory Committee (EARAC), add clarification of when this rule is applicable to vendors, and make other applicable changes.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being 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. Bobby Wilkinson has determined that, for the first five years the new sections would be in effect:

1. The new sections do not create or eliminate a government program but relates to updates to existing requirements for recipients of Department funds.
2. The new sections do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new sections do not require additional future legislative appropriations.
4. The new sections 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 sections are not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.
6. The new sections will not expand, limit, or repeal an existing regulation.
7. The new sections will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new sections 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 sections and determined that they 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 sections do 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 sections as to their possible effects on local economies and has determined that for the first five years the new sections 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 sections are in effect, the public benefit anticipated as a result of the new sections would be a more current and germane rule. There will not be economic costs to individuals required to comply with the new sections.

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 sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 28, 2024 to July 28, 2024, 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.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, July 28, 2024.

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

10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds

~~§1.401 General Statement~~Effective Date and Definitions

(a) Revisions to this Subchapter reflect updates to 2 CFR Part 180 and 2 CFR Part 200, and are generally effective for Contracts executed on or after October 1, 2024. Previous versions of these rules as memorialized in Contracts will continue to be effective, unless the Contract is amended to add additional funds on or after October 1, 2024, and that amendment specifically incorporates some or all of the provisions in the rule, to the extent federally allowed.

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this title that govern the program associated with the request, or assigned by federal or state law.

(1) Affiliate--Shall have the meaning assigned by the specific program or programs described in this part.

(2) Department--The Texas Department of Housing and Community Affairs.

(3) Equipment--tangible personal property having a useful life of more than one year or a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by entity for financial statement purposes, or \$10,000 (except in the case of Contracts subject to TXGMS or UGMS, in which case \$5,000).

~~(4) Executive Award Review and Advisory Committee (EARAC) -- the Committee established in Tex. Gov't Code chapter 2306, that recommends the award or allocation of any Department funds or resources.~~

~~(45) Professional services--for a unit of government is as defined by state law. For Private Nonprofit Organizations it means services:~~

(A) within the scope of the practice, as defined by state law, of:

- (i) accounting;
- (ii) architecture;
- (iii) landscape architecture;
- (iv) land surveying;
- (v) medicine;
- (vi) optometry;
- (vii) professional engineering;
- (viii) real estate appraising;
- (ix) professional nursing; or
- (x) legal services; or

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

- (i) a certified public accountant;
- (ii) an architect;
- (iii) a landscape architect;
- (iv) a land surveyor;
- (v) a physician, including a surgeon;
- (vi) an optometrist;

- (vii) a professional engineer;
- (viii) a state certified or state licensed real estate appraiser;
- (ix) attorney; or
- (x) a registered nurse.

(~~56~~) Single Audit--The audit required by Office of Management and Budget (OMB), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, chapter 783, Uniform Grant and Contract Management, as reflected in an audit report.

(~~67~~) Single Audit Certification Form--A form that lists the source(s) and amount(s) of Federal funds and/or State funds expended by the Subrecipient during their fiscal year along with the outstanding balance of any loans made with federal or state funds if there are continuing compliance requirements other than repayment of the loan.

(~~78~~) Subrecipient--Includes an entity receiving or applying for federal or state funds from the Department under Chapters 6, 7, ~~or 20~~, 23, 24, 25 or 26 as identified by Contract or in this subchapter. Except as otherwise noted in this subchapter or by Contract, the definition does not include Applicants/Owners who have applied for and/or received funds under a program administered by the Multifamily Finance Division, except for CHDO Operating funds, a grant made to a unit of government or nonprofit organization, or Affiliate, or TCAP-RF grants or loans when made to a unit of government or nonprofit organization or Affiliate. Except as otherwise noted in this subchapter or by Contract, this definition does not include vendors having been procured by the Department for goods or services. A Subrecipient may also be referred to as Administrator.

(~~89~~) Supplies--means tangible personal property other than "Equipment" in this section.

(~~910~~) Texas Grant Management Standards (TxGMS)--The standardized set of financial management procedures and definitions established by Tex. Gov't Code, chapter 783 regarding Uniform Grant and Contract Management to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations including public housing and housing finance agencies. In addition, Tex. Gov't Code Chapter 2105, regarding Administration of Block Grants, subjects subrecipients of federal block grants (as defined therein) to TxGMS.

(~~1011~~) Uniform Grant Management Standards (UGMS)--the standardized set of financial management procedures used by the Department in Contracts that began before January 1, 2022.

§1.402 Cost Principles and Administrative Requirements

(a) Subrecipients shall comply with the cost principles and uniform administrative requirements set forth as applicable in TxGMS or UGMS provided, however, that all references therein to "local government" shall be construed to mean Subrecipient. A Subrecipient that is administering a housing Program under Chapters 24 or 26 of this Title, may receive a fixed amount of administrative funds. Private Nonprofit Subrecipients of Emergency Solutions Grant (ESG), HOME Investments Partnership Program (HOME), Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), Low Income Household Water and Wastewater Program (LIHWAP), Community Service Block Grant (CSBG) discretionary awards to non-eligible entities, and Department of Energy Weatherization Assistance Program (DOE WAP) do not have to comply with TxGMS unless otherwise required by Notice of Funding Availability (NOFA) or Contract. For federal funds, Subrecipients will also follow 2 CFR Part 200, as interpreted by the federal funding agency.

(b) In order to maintain adequate separation of duties, the Subrecipient shall ensure that no individual has the ability to perform more than one of the functions described in paragraphs (1) - (5) of this subsection that might result in a release of funds without appropriate controls:

- (1) Requisition authorization;
- (2) Encumbrance into software;
- (3) Check creation and/or automated payment disbursement;
- (4) Authorized signature/electronic signature; and
- (5) Distribution of paper check.

(c) For Subrecipients with fewer than five paid employees, demonstration of sufficient controls to similarly satisfy the separation of duties required by subsection (b) of this section, must be provided at the time that funds are applied for and continue to be implemented through the term of the Contract.

(d) Subrecipient will sign a Contract with the applicable Assurances in Appendix 6 of TxGMS as required by and in the form and substance acceptable to the Department's Legal Division.

§1.403 Single Audit Requirements

(a) For this section, the word Subrecipient also includes Multifamily Development Owners who have applied for or received Direct Loan Funds, grants or 811 PRA funds from the Department who are or have an Affiliate that is required to submit a Single Audit, i.e. units of government, nonprofit organizations.

(b) Procurement of a Single Auditor. A Subrecipient or Affiliate must procure their single auditor in the following manner unless subject to a different requirement in the Local Government Code:

(1) Competitive Proposal procedures whereby competitors' qualifications are evaluated and a contract awarded to the most qualified competitor. Proposals should be advertised broadly, which may include going outside the entity's service area, and solicited from an adequate number (usually two or more) of qualified sources. Procurements must be conducted in a manner that prohibits the use of in-state or local geographical preferences in the evaluation of bids or proposals;

(2) A Subrecipient may not use the sealed bid method for procurement of the Single Auditor. There is no requirement that the selected audit firm be geographically located near the Subrecipient. If a Subrecipient does not receive proposals from firms with appropriate experience or responses with a price that is not reasonable compared to the cost price analysis, the submissions must be rejected and procurement must be re-performed.

(c) A Subrecipient or Affiliate must confirm that it is contracting with an audit firm that is properly licensed to perform the Single Audit and is not on a limited scope status or under any other sanction, reprimand or violation with the Texas State Board of Public Accountancy. The Subrecipient must ensure that the Single Audit is performed in accordance with the limitations on the auditor's license.

(d) A Subrecipient is required to submit a Single Audit Certification form within two (2) months after the end of its fiscal year indicating the amount they expended in Federal and State funds during the fiscal year and the outstanding balance of any loans made with federal funds if there are continuing compliance requirements other than repayment of the loan.

(e) Subrecipients that expend \$1,000,000 or more (or in the case of entities subject to TXGMS or UGMS of \$750,000 or more) in federal and/or state awards or have an outstanding loan balance associated with a federal or state resource of \$1,000,000 or more (or in the case of entities subject to TXMGS or UGMS of \$750,000 or more) with continuing compliance requirements, or a combination thereof must have a Single Audit or program-specific audit conducted. If the Subrecipient's Single Audit is required by 2 CFR 200, subpart F, the report must be submitted to the Federal Audit Clearinghouse the earlier of 30 calendar days after receipt of the auditor's report or nine (9) months after the end of its respective fiscal

year. If a Single Audit is required but not under 2 CFR Part 200, subpart F, the report must be submitted to the Department the earlier of 30 calendar days after receipt of the auditor's report or nine months after the end of its respective fiscal year. If the deadline is on a Saturday, Sunday, federal holiday (for a Single Audit required to be submitted to the Federal Audit Clearinghouse), or a state holiday (for a Single Audit required to be submitted to the Department), the deadline is the next business day.

(f) Subrecipients are required to submit a notification to the Department within five business days of submission to the Federal Audit Clearinghouse. Along with the notice, the Subrecipient must indicate if the auditor issued a management letter. If a management letter was issued by the auditor, a copy must be sent to the Department.

(g) The Department will review the Single Audit and issue a management decision letter for audit findings pertaining to the Federal award provided to the Subrecipient from the Department. If the Single Audit results in disallowed costs, those amounts must be repaid or an acceptable repayment plan must be entered into with the Department in accordance with 10 TAC §1.21, Action by Department if Outstanding Balances Exist.

(h) In evaluating a Single Audit, the Department will consider both audit findings and management responses in its review. The Department will notify Subrecipients and Affiliates (if applicable) of any Deficiencies or Findings from within the Single Audit for which the Department requires additional information or clarification and will provide a deadline by which that resolution must occur.

(i) All findings identified in the most recent Single Audit will be reported to the Executive Director during EARAC through the Previous Participation review process described in Subchapter C of this Chapter. The Subrecipient may submit written comments for consideration within five business days of the Department's management decision letter.

(j) If the Subrecipient disagrees with the auditors finding(s), and the issue is related to administration of one of the Department's programs, an appeal process is available to provide an opportunity for the auditee to explain its disagreement to the Department. This is not an appeal of audit findings themselves. The Subrecipient may submit a letter of appeal and documentation to support the appeal. The Department will take the documentation and written appeal into consideration prior to issuing a management decision letter. If the Subrecipient does not disagree with the auditor's finding, no appeal to the Department is available.

(k) In accordance with 2 CFR Part 200 and the State of Texas Single Audit Circular §225, with the exception of nondiscretionary CSBG funds except as otherwise required by federal laws or regulations, the Department may suspend and cease payments under all active Contracts, or refrain from executing a new Contract for any Board awarded contracts, until the Single Audit is received. In addition, the Department may elect not to renew an entity in accordance with §1.411 of this Chapter (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code), or not amend or enter into a new Contract with a Subrecipient until receipt of the required Single Audit Certification form or the submission requirements detailed in subsection (e) of this section.

(l) In accordance with Subchapter C of this Chapter (relating to Previous Participation Reviews), if a Subrecipient applies for funding or an award from the Department, findings noted in the Single Audit and the failure to timely submit a Single Audit Certification Form or Single Audit will be reported to the Executive Director ~~EARAC~~.

§1.404 Purchase and Procurement Standards

(a) The procurement of all goods and services shall be conducted, to the maximum extent practical, in a manner providing full and open competition consistent with the standards of 2 CFR Part 200, UGMS, and TxGMS, as applicable.

(b) Subrecipients shall establish, and require its subrecipients/Subcontractors (as applicable by program regulations) to establish, written procurement procedures that when followed, result in procurements that comply with federal, state and local standards, and grant award contracts. Procedures must:

(1) include a cost or price analysis that provides for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Where appropriate, analyzing lease versus purchase alternatives, performing the proposed service in-house, and performing any other appropriate analysis to determine the most economical approach.

(2) require that solicitations for goods and services provide for a clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition, but must contain requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards. The specific features of "brand name or equal value" that bidders are required to meet must be listed in the solicitation.

(3) include a method for conducting technical evaluations of the proposals received and for selecting awardees.

(c) Documentation of procurement processes, to include but not be limited to the items in paragraphs (1) to (9) of this subsection, must be maintained by the Subrecipient in accordance with the record retention requirements of the applicable program:

(1) rationale for the type of procurement,

(2) cost or price analysis,

(3) procurement package,

(4) advertising,

(5) responses,

(6) selection process,

(7) contractor selection or rejection,

(8) certification of conflict of interest requirements being satisfied, and

(9) evidence that the awardee is not an excluded entity in the System for Award Management (SAM).

(d) In accordance with 34 Texas Administrative Code, Part 1, Chapter 20, Subchapter D, Division 1, each Subrecipient shall make a good faith effort to utilize the state's Historically Underutilized Business Program in contracts for construction, services (including consulting and Professional Services) and commodities purchases.

(e) The State of Texas conducts procurement for many materials, goods, and appliances. Use of the State of Texas Co-Op Purchasing Program does not satisfy the requirements of 2 CFR Part 200. For more detail about how to purchase from the state contract, please contact: State of Texas Co-Op Purchasing Program, Texas Comptroller of Public Accounts. If Subrecipients choose to use the Cooperative Purchasing Program, documentation of annual fee payment is required.

(f) All vehicles considered for purchase with state or federal funds must be pre-approved by the Department. Subrecipient must present written justification for the needed vehicle. If approved such approval will be provided via written correspondence from the Department. Procurement procedures must include provisions for full free and open competition and a comparison of the costs associated with leasing versus buying a vehicle. Any vehicle purchased without approval may result in disallowed costs.

(g) For procurement transactions not subject to UGMS or TxGMS, the Department has adopted a \$10,000 micropurchase and \$250,000 simplified acquisition threshold. For procurement transactions subject to UGMS or TxGMS, Subrecipient must follow a \$3,000 micropurchase threshold and a \$250,000 Texas

Acquisition Threshold (which is currently tied to the federal simplified acquisition threshold). If the federal simplified acquisition threshold changes, as a result of 2 CFR §200.88, or if it is temporarily raised because of a federal disaster declaration, the Department will publish the new amount on its website.

§1.405 Bonding Requirements

(a) The requirements described in this subsection relate to construction or facility improvements in DOE WAP, HOME, HOME-ARP, CDBG, NSP, HHSP, EH Fund, TCAP-RF, and ESG Subrecipients, or other fund source required by state or federal law or regulation to have bonding for construction or facility improvements.

(1) For construction contracts exceeding \$100,000, the Subrecipient must request and receive Department approval of the bonding policy and requirements of the Subrecipient to ensure that the Department is adequately protected.

(2) For construction contracts in excess of \$100,000, and for which the Department has not made a determination that the Department's interest is adequately protected, a "bid guarantee" from each bidder equivalent to 5% of the bid price shall be requested. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that upon acceptance of the bid, the bidder will, ~~upon acceptance of his bid~~, execute such contractual documents as may be required within the time specified. A bid bond in the form of any of the documents described in this paragraph may be accepted as a "bid guarantee."

(A) A performance bond on the part of the Subrecipient for 100% of the contract price. A "performance bond" is one executed in connection with a contract, to secure fulfillment of all obligations under such contract.

(B) A payment bond on the part of the subcontractor/vendor for 100% of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(C) Where bonds are required, in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223, "Surety Companies Doing Business with the United States."

(b) A unit of government must comply with the bond requirements contained in Texas statutes, including but not limited to Tex. Gov't Code ch. 2253 and Tex. Local Gov't Code §252.044, §262.032, or §392.0525, as applicable.

§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. In compliance with that assurance 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.

(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 a minimum of 5% of the Contract amount. ~~\$10,000 or an amount equal to the contract if less than \$10,000.~~

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. 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 ~~to titled~~ "Enforcement" in association with issues identified as part of filing claims against the fidelity bond.

§1.407 Inventory Report

(a) The Department requires the submission of an inventory report for all Contracts to be submitted to the Department, no later than 45 calendar days after the end of the Contract Term, or a more frequent period as reflected in the Contract. Real Property and Equipment must be inventoried and reported on the Department's required form. The form and instructions are found on the Department's website.

(b) Real property and Equipment purchased with funds under a Contract with the Department must be inventoried and reported to the Department during the Contract Term.

(c) Aggregate Supplies of over \$10,000 (except in the case of Contracts subject to TXGMS or UGMS, in which case this limit is \$5,000), must be reported to the Department at the end of the Contract Term using federal form SF-428, which is a standard form to collect information related to tangible personal property or other form required by the federal fund source.

(d) For certain public facility activities funded by the Community Development Block Grant, inventory requirements will be those required by HUD for real property, as further identified in the Contract.

§1.408 Travel

The governing body of each Subrecipient must adopt and implement for the term of the Contract travel policies that adhere to 2 CFR Part 200, for cost allowability. The Subrecipient must follow either the federal travel regulations or State of Texas travel rules and regulations found on the Comptroller of Public Accounts website at www.cpa.state.tx.us, as applicable.

§1.409 Records Retention

(a) For this section, the word Subrecipient also includes Multifamily Development Owners who have Direct Loan or HOME-ARP Funds or grants, or 811 PRA assistance. The Department requires Subrecipient organizations, and any entities who perform services and assistance on their behalf, to document client services and assistance. Subrecipient organizations must arrange for the security of all program-related computer files through a remote, online, or managed backup service. Confidential client files must be maintained in a manner to protect the privacy of each client and to maintain the same for future reference. Subrecipient organizations must store physical client files in a secure space in a manner that ensures confidentiality and in accordance with Subrecipient organization policies and procedures. To the extent that it is financially feasible, archived client files should be stored offsite from Subrecipient

headquarters, in a secure space in a manner that ensures confidentiality and in accordance with organization policies and procedures.

(b) Records of client eligibility must be retained for five years starting from the date the household activity is completed, unless otherwise provided in federal regulations governing the program.

(c) Other records must be maintained as described in the Contract or the LURA, and in accordance with federal or state law for the programs described in the Chapters of this Part.

§1.410 Determination of Alien Status for Program Beneficiaries

(a) Purpose. The purpose of this section is to provide uniform Department guidance on Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1986 (PRWORA), which provides that an alien who is not a Qualified Alien is not eligible for any federal or state public benefit.

(b) Definitions. The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program under which program eligibility is seeking to be determined, or assigned by federal or state law.

(1) Nonprofit Charitable Organization--An entity that is organized and operated for purposes other than making gains or profits for the organization, its members or its shareholders, and is precluded from distributing any gains or profits to its members or shareholders; and is organized and operated for charitable purposes.

(2) Public Organization--An entity that is a Unit of Government or an organization established by a Unit of Government.

(3) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b) or (c).

(4) State--The State of Texas or the Department, as indicated by context.

(5) Subrecipient--An entity that receives federal or state funds passed through the Department. The definition does apply to a vendor having been procured by the Department to determine eligibility for federal or state funds and as otherwise reflected in the Contract.

(6) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of program applicants.

(c) Applicability for Federal Funds.

(1) The determination of whether a federal program, or activity type under a federal program, is a federal public benefit for purposes of PRWORA is made by the federal agency with administration of a program or activity, not by the Department. Only in cases in which the federal agency has given clear interpretation that it requires PRWORA to be applicable to a program or activity will this rule be applied by the Department.

(2) The requirements of this section are applicable to Subrecipients of federal funds passed through the Department for which the federal program has made a determination that the activity performed by the Subrecipient requires compliance with PRWORA. However, certain exemptions under PRWORA may exist on a case specific, or activity specific basis as further described in this rule.

(d) Applicability for State Funds. The Department has determined that State Housing Trust Funds that are provided to a Subrecipient that is a Public Organization or acting on behalf of a Public Organization to be distributed directly to individuals, are a state public benefit.

(e) No Applicable Exemptions under PRWORA. If no exemptions under PRWORA are applicable to the Subrecipient or to the activity type, as further detailed in this section, then the Subrecipient must verify U.S. Citizen, U.S. National, or Qualified Alien status ("legal status") using SAVE and evaluate eligibility using the rules for the applicable program under this Title.

(f) Exemptions Under PRWORA.

(1) In accordance with 8 U.S.C. §1642(d), a Subrecipient that is a Nonprofit Charitable Organization receiving funds from the Department for which the federal program or activity requirement is that a household be verified for eligibility status, is not required to verify that an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(2) For activities in the Low Income Home Energy Assistance Program, Low Income Household Water and Wastewater Program, and the Department of Energy Weatherization Program performed by a Nonprofit Charitable Organization (identified as a Private Nonprofit Organization in the Subrecipient's Contract with the Department), where the Department must ensure that an individual is a U.S. Citizen, U.S. National, or Qualified Alien, a Subrecipient must ensure compliance with the verification requirement through electing to proceed under subparagraph (A), (B), or (C) of this paragraph. Subrecipients will submit in writing to the Director of Community Affairs or his/her designee no later than six months prior to the beginning of a Contract Term its election under one of the subparagraphs in this subsection. For existing Subrecipients, an election made under this subsection does not need to be restated annually, but will continue from the election made in the prior year unless the Subrecipient notifies the Department otherwise in writing before the deadline. For new Subrecipients, if the election must be made with the Application or if there is no Application before Contract execution. If the existing Subrecipient does not notify the Department of the election in writing by the deadline but refuses to abide by its election the Subrecipient will not be eligible to perform as a Subrecipient in the program as further provided for in paragraph (3) of this subsection. Failure by the Subrecipient to select an option by the deadline is good cause for nonrenewal or termination of a Contract.

(A) Subject to affirmation by U.S. Health and Human Services, the Subrecipient may voluntarily elect to request from the household and transmit to the Department, or a party contracted by the Department, sufficient information or documentation so that the Department is able to ensure an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(i) The Nonprofit Charitable Organization must provide and maintain a sufficient method of electronic transmittal system that allows for such information to be provided to the Department or its contractor, and ensures the secure safekeeping of such paper and/or electronic files, and receipt of subsequent response back from the Department or its contracted party.

(ii) Upon receipt of the results of the verification performed by the Department, or its contracted party, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this Title.

(B) The Subrecipient may voluntarily elect to perform verifications through the SAVE system, as authorized through the Department's access to such system.

(C) The Subrecipient may voluntarily elect to procure an eligible qualified organization to perform such verifications on their behalf, subject to Department approval.

(i) The Nonprofit Charitable Organization and/or its procured provider must maintain sufficient evidence and documentation that verification has taken place so that such verification can be confirmed by the Department, and must ensure the secure safekeeping of such paper and/or electronic files.

(ii) Upon receipt of the results of the verification performed by the procured provider, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this Title.

(3) Other activities that do not require verification by Public Organizations or Nonprofit Charitable Organizations are described in the August 5, 2016, HUD, HHS, and DOJ Joint Letter Regarding Immigrant Access to Housing and Services.

(g) The Department may further describe a Subrecipient's responsibilities under PRWORA, including but not limited to use of the SAVE system, in its Contract with the Subrecipient. Nothing in this rule shall be construed to be a waiver, ratification, or acceptance of noncompliant administration of a program prior to the rule becoming effective.

(h) A Subrecipient must establish that an individual is a U.S. Citizen, U.S. National, or Qualified Alien using the documents deemed acceptable by the Department, and which have been published on the Department's website. This information may be updated by the Department from time to time, and highly encourages Subrecipients or other concerned parties to contact the Department if revisions are suggested.

§1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code

(a) Purpose. The purpose of this section is to inform compliance with Tex. Gov't Code Ch. 2105, Administration of Block Grants.

(b) Applicability. This rule applies to all funds administered by the Department that are subject to Tex. Gov't Code Ch. 2105. The activities administered by the Department that are currently subject to Tex. Gov't Code Chapter 2105 are those funded by the Community Services Block Grant (CSBG) funds that are required to be distributed to Eligible Entities, the Low Income Home Energy Assistance Program (LIHEAP) funds that are distributed to Subrecipients, and the funds that the Department administers and distributes to Subrecipients from the annual allocation from the Community Development Block Grant (CDBG) Program. If additional block grant funds that would be subject to Tex. Gov't Code Ch. 2105 by its terms are assigned to the Department, they too would be subject to this rule. Capitalized terms used in this section are defined in the applicable Rules or chapters of this title or as assigned by federal or state law.

(c) Hearings required to be held by Subrecipients. Consistent with Tex. Gov't Code §2105.058, Subrecipients that receive more than \$5,000 from one or more of the programs noted in subsection (b) of this section must annually submit evidence to the Department that a public meeting or hearing was held solely to seek public comment on the needs or uses of block grant funds received by the Subrecipient. This meeting or hearing may be held in conjunction with another meeting or hearing if the meeting or hearing is clearly noted as being for the consideration of the applicable block grant funds under this subsection.

(d) Complaints. The Department will notify a Subrecipient of any complaint received concerning the Subrecipient services. As authorized by Tex. Gov't Code §2105.104, the Department shall consider the history of complaints, for the preceding three year period, regarding a Subrecipient in determining whether to award, increase, or renew a Contract with a Subrecipient. The Department will not consider complaints in determining whether to award, increase, or renew a Contract with a Subrecipient that the Department has determined in accordance with 10 TAC §1.2 (relating to Department Complaint System to the Department) it has no authority to resolve, or that are not corroborated.

(e) Requests for Reconsideration. Subrecipient must establish written procedures for the handling of denials of service when the denial involves a household inquiring or applying for services/assistance. This procedure must include, at a minimum:

(1) A written denial of assistance notice being provided to the affected person within 10 calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such

process is in accordance with the written policy. This notification shall include written notice of the right of a hearing or secondary review of income documentation, as applicable, the timeframe the affected person has to respond to the decision, and specific reasons for the denial of assistance. The Subrecipient may adopt a policy limiting the time period during which a request for a hearing will be accepted and the format for the request, but the Subrecipient must provide the affected person with at least 10 calendar days to request a hearing or secondary review.

(2) If requested by the affected person, Subrecipient shall hold a private, recorded hearing (unless otherwise required by law) either virtually, by phone, or in person in an accessible location within 15 calendar days after the Subrecipient received the hearing request from the affected person and must provide the affected person notice in writing of the time/location of the hearing at least seven calendar days before the hearing.

(3) The hearing shall allow time for a statement by the Subrecipient's staff with knowledge of the case.

(4) The hearing shall allow the affected person at least equal time, if requested, to present relevant information contesting the decision.

(5) If a denial is based solely on income eligibility, the provisions described in paragraphs (2) - (4) of this subsection do not apply, however the affected person may request a secondary review of income eligibility based on initial documentation provided at the time of the original request for assistance. Such a secondary review must include an analysis of the initial calculation based on the documentation received with the initial request for services and will be performed by an individual other than the person who performed the initial determination. If the secondary review upholds the denial based on income eligibility documents provided at the initial request, the affected person must be notified in writing.

(6) If the affected person is not satisfied with the Subrecipient's determination at a hearing or as concluded based on a secondary income eligibility review, the affected person may request a subsequent review of the decision by the Department if the affected person requests a further review in writing within 10 calendar days of notification of an adverse decision. If applicable, Subrecipient's should hold funds aside in the amount needed to provide the services requested by the affected person until the Department completes its decision.

(7) Affected persons, after having followed the steps in paragraphs (1) through (6) of this subsection, who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Tex. Gov't Code, Chapter 2001.

(8) The hearing under subsection (e)(7) of this section shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient, for which the procedures are further described in §1.13 of this title (relating to Contested Case Hearing Procedures).

(f) Nonrenewal or Reduction of Block Grant Funds to a Specific Subrecipient.

(1) As required by Tex. Gov't Code §2105.202(a), this section defines "good cause" for nonrenewal of a Subrecipient contract or a reduction of funding. Good cause may include any one or more of the following:

(A) Consistent and repeated corroborated complaints about a Subrecipient's failure to follow substantive program requirements, as provided for in subsection (d) of this section;

(B) Lack of compliance with 10 TAC §1.403 (relating to Single Audit Requirements);

(C) Statute, rule, or contract violations that have not been timely corrected and have prompted the Department to initiate proceedings under 10 TAC Chapter 2, (relating to Enforcement), and have resulted in a final order confirming such violation(s);

(D) Disallowed costs in excess of \$10,000 that have not been timely repaid;

(E) Failure by Subrecipient to select an option as provided for in §1.410 of this title (relating to Determination of Alien Status for Program Beneficiaries) by the deadline;

(F) The ineffective rendition of services to clients, which may include a Subrecipient's failure to perform on a Contract, and which may include materially failing to expend funds;

(G) A failure to address an identified material lack of cost efficiency of programs;

(H) A material failure of the services of the Subrecipient to meet the needs of groups or classes of individuals who are poor or underprivileged or have a disability;

(I) Providing services that are adequately addressed by other programs in that area;

(J) The extent to which clients and program recipients are involved in the Subrecipient's decision making;

(K) Providing services in a manner that unlawfully discriminates on the basis of protected class status; or

(L) Providing services outside of the designated geographic scope of the Subrecipient.

(2) Notification of Reduction, Termination, or Nonrenewal of a Contract and Opportunity for a Hearing. As required by Tex. Gov't Code §2105.203 and §2105.301, the Department will send a Subrecipient a written statement specifying the reason for the reduction, termination, or nonrenewal of funds no later than the 30th calendar day before the date on which block grant funds are to be reduced, terminated, or not renewed, unless excepted for by paragraph (4) of this subsection. After receipt of such notice for reduction or nonrenewal, a Subrecipient may request an administrative hearing under Tex. Gov't Code Ch. 2001 if the Subrecipient is alleging that the reduction is not based on good cause as identified in subsection (f)(1) of this section or is without reasonable basis in fact or law. If a Subrecipient requests a hearing, the Department may, at its election, enter into an interim contract with either the Subrecipient or another provider for the services formerly provided by the provider while administrative or judicial proceedings are pending.

(3) Notification of Reduction of Block Grant funds for a Geographical Area. If required by Tex. Gov't Code §2105.251 and §2105.252, the Department will send a Subrecipient a written statement specifying the reason for the reduction of funds no later than the 30th day before the date on which block grant funds are to be reduced.

(4) Exceptions. As authorized by Tex. Gov't Code §2105.201(b), the notification and hearing requirements for reduction or nonrenewal of funding provided for in paragraphs (2) and (3) of this subsection do not apply if a Subrecipient's block grant funding becomes subject to the Department's competitive bidding rules. The Department will require such competitive bidding for awarding block grant funding subject to Tex. Gov't Code Ch. 2105 for Subrecipients and in the Department's procuring of Subrecipients or contractors to administer or assist in administering such block grant funds, which includes the competitive release of Notices of Funding Availability and competitive Requests for Subrecipients or Providers. The criteria for evaluation of competitive responses shall be set forth in the applicable notices of funds availability, requests, or other procurement invitation document.

(5) Nothing in this section supersedes or is intended to conflict with the rights and responsibilities outlined in §2.203 of this title (relating to Termination and Reduction of Funding for CSBG Eligible Entities).