

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
**TDHCA Governing Board Approved Draft of
10 TAC Chapter 23 (“2017 HOME Single Family Rules”)**

Disclaimer

Attached is a draft of 10 TAC Chapter 23 (“2017 HOME Single Family Rules”) that was approved by the TDHCA Governing Board on April 27, 2017. This draft incorporates changes made by the Board as a result of public comment at the meeting. This document, including its preamble, is scheduled to be published in the May 12, 2017 edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment. The version herein is informational only and should not be relied upon as the basis for public comment.

Public Comment

Public Comment Period: Starts: 8:00 a.m. Austin local time on May 12, 2017 Ends: 5:00 p.m. Austin local time on June 12, 2017

Comments received after 5:00 p.m. Austin local time on June 12, 2017 will not be accepted.

Written comments may be submitted, in hard copy/fax or electronic formats to:

Texas Department of Housing and Community Affairs
Attn: Abigail Versyp
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Written comments may be submitted in hard copy, fax, or email formats within the designated public comment period. 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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TITLE 10 COMMUNITY DEVELOPMENT

PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 23 SINGLE FAMILY HOME PROGRAM

SUBCHAPTER A GENERAL GUIDANCE

§23.1 Applicability and Purpose

(a) Applicability. This ~~chapter~~Chapter governs the use and administration of all HOME ~~Single-Family~~single family Activities funds provided to the Texas Department of Housing and Community Affairs (the "Department") by the U.S. Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended (42 U.S.C. §§ 12701 - 12839) and HUD regulations at 24 CFR, Part 92 as amended. Chapter 20 of this ~~title~~(Title relating to Single Family Programs Umbrella Rule) and other ~~chapters~~Chapters 1 and 2 of this Title will apply to all ~~Single-Family~~single family activities, including Single Family Development. Unless otherwise noted herein or required by law, all provisions of this ~~chapter~~Chapter apply to any Application ~~including Recertification~~received on or after the date of adoption of this ~~chapter~~Chapter. Existing Agreements executed within the preceding twelve (12) months from the date of adoption of this ~~chapter~~Chapter or current pending Applications may be amended in writing at the request of the Administrator or Applicant, and with Department approval, so that all provisions of this ~~chapter~~Chapter apply to the Agreement or Application. Amendments proposing only partial adoption of this ~~chapter~~Chapter are prohibited. No amendment adopting this ~~chapter~~Chapter shall be granted if, in the discretion of the Department, any of the provisions of this ~~chapter~~Chapter conflict with the Notice of Funding Availability (NOFA) under which the existing Agreement was awarded or Application was submitted. ~~The Governing Board may waive rules subject to this Chapter for good cause to meet the purpose of the HOME Program as described further in (b) Purpose of this Section, provided the action does not conflict with the federal regulations governing the use of these funds, or impact federally imposed obligation or expenditure deadlines governing the HOME Program.~~

(b) Purpose. The State's HOME Program is designed to:

- (1) focus on the areas with the greatest housing need described in the State Consolidated Plan;
- (2) provide funds for home ownership and rental housing through acquisition, ~~new construction, rehabilitation, and tenant-based rental assistance~~;New Construction, Rehabilitation, and Tenant-Based Rental Assistance;
- (3) promote partnerships among all levels of government and the private sector, including ~~non-profit~~nonprofit and for-profit organizations; and
- (4) provide low, very low, and extremely low income families with affordable, decent, safe, and sanitary housing.

§23.2 Definitions

These words when used in this ~~chapter~~Chapter shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions may be found in ~~Texas Government~~Tex. Gov't Code, ~~Chapter~~ §2306 or Chapter 20 of this ~~title~~(Title relating to Single Family Programs Umbrella Rule).

- (1) Area Median Family Income--The income limits published annually by the U.S. Department of Housing and Urban Development (HUD) for the Housing Choice Voucher Program that is used by the Department to determine the eligibility of ~~applicants~~Applicants for the HOME Program, also referred to as AMFI.

(2) CFR--Code of Federal Regulations.

(3) Commitment of Funds--Occurs when the funds are awarded to an Administrator for a specific Activity or a Project is approved by the Department and set up in the Integrated Disbursement and Information System (IDIS) established by HUD.

(4) Construction Completion Date--The Construction Completion Date shall be the date of completion of all improvements as stated on the affidavit of completion, provided that the affidavit is filed within 10 days of the stated date of completion or the date of filing, as outlined in §53.106 of the Texas Property Code.

(5) Development Site--The area, or if scattered site, areas on which the development is proposed to be located.

(6) Direct Project Activity Costs--The total costs of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), acquisition and closing costs, rental and utility subsidy and deposits, and Match Funds.

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

(8) Homeownership--Ownership in fee simple title in a 1 to 4 unit dwelling or in a condominium unit, or equivalent form of ownership approved by the Department. Homeownership is not right to possession under a contract for deed, installment contract, or land contract (pursuant to which the deed is not given until the final payment is made).

(9) Identity of Interest--An acquisition will be considered to be an Identity of Interest transaction when the purchaser has any financial interest whatsoever in the seller or lender or is subject to common control, or any family relationship by virtue of blood, marriage or adoption exists between the purchaser and the seller or lender.

(10) Match--Funds contributed to a Project Activity that meet the requirements of 24 CFR §§92.218 - 92.220. Match contributed to a Project or an Activity does not include mortgage revenue bonds, non HOME-assisted projects, and cannot include any other sources of Department funding unless otherwise approved in writing by the Department.

(11) New Construction--Construction of a new Single Family Housing Unit which involves:

(A) construction on a lot that was not the site of a Single Family Housing Unit on the date HOME assistance was requested;

(B) construction of a new Single Family Housing Unit following acquisition; or

(C) construction of a site-built Single Family Housing Unit which replaces a unit of manufactured housing.

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

(13) Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs as provided in the Consolidated Plan and the State's One Year Action Plan.

(14) Predevelopment Costs--Costs consistent with 24 CFR 92. 212 related to a specific eligible Project Activity including:

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

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

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

~~(1315)~~ Principal--A Person, or Persons, that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

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

(B) Corporations: Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation; and

(C) Limited liability companies: Principals include all managing members, members having a 10 percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

~~(14) Project--A single housing unit with a unique physical address. A Project may also refer to an individual Project, Development, or site.~~

~~(15)(16) Reconstruction--Defined term in 24 CFR Part 92.~~

~~(17) Rehabilitation--Improvements and repairs made to an existing Single Family Housing Unit which do not require demolition of the entire existing Single Family Housing Unit. Additionally, replacement of a unit of manufactured housing with a new unit of manufactured housing is Rehabilitation.~~

~~(18) Reservation System Participant (RSP)--Administrator who has executed a written agreement~~Agreement with the Department that allows for participation in the Reservation System.

~~(1619) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application and/or Agreement that the Administrator will serve.~~

~~(1720) Texas Minimum Construction Standard (TMCS)--The program standard used to determine the minimum acceptable housing condition for the purposes of~~rehabilitationRehabilitation.

~~(1821) Third Party--A Person who is not:~~

(A) an Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

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

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

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

RESALE AND RECAPTURE OF FUNDS

§23.20 Availability of Funds and Regional Allocation Formula

Funds subject to regional allocation formula shall be made available as described in paragraphs (1) - (3) of this rule:

- (1) Applicants applying in response to a ~~competitive application cycle~~ Competitive Application Cycle NOFA will be ranked highest to lowest by region and subregion. ~~If funding is made available to multiple Activities under one NOFA, the funds~~ Funds remaining after awarding all eligible Applications in a subregion shall collapse and be directed to the next Application across all regions and subregion regardless of ~~Activity~~ the type of assistance being proposed, based on descending scoring order;
- (2) Funds made available through an open ~~application~~ Application cycle and subject to regional allocation formula shall be made available to each region and subregion for a time period to be specified in the applicable NOFA, after which the funds remaining shall collapse and be made available statewide; and
- (3) In the event of a tie between rankings of two or more Applicants, the Department reserves the right to determine which Application will receive a recommendation for funding, or as otherwise specified in the NOFA. Tied Applicants may ~~also receive a partial recommendation for funding or may~~ be awarded through a ~~lottery~~ random selection process.

§23.21 Application Forms and Materials and Deadlines

- (a) The Department will produce an Application, which if properly completed in accordance herein by an eligible Applicant and approved by the Department, can satisfy the Department's requirements to be qualified to administer HOME activities.
- (b) The Department must receive all Applications by the deadline specified in the NOFA.

§23.22 Contract Award Application Review Process for Open and Competitive Application Cycles

- (a) An Application received by the Department in response to an open ~~application~~ Application cycle NOFA will be assigned a "Received Date." An Application will be prioritized for review based on its "Received Date." ~~Application acceptance dates may be staggered under an open Application cycle to prioritize Applications which propose to serve areas identified in Tex. Gov't Code §2306.127 as priority for certain communities.~~ An Application with outstanding administrative deficiencies may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date." If all funds available under a NOFA are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.
- (b) For Applications received by the Department in response to a Competitive Application Cycle NOFA, the Department will accept Applications on an ongoing basis during the ~~application~~ Application acceptance period as specified in the NOFA. Applications will be reviewed and scored then ranked based on the score of the Application.

§23.23 Reservation System Participant Review Process

An ~~application~~ Application for a Reservation System Participant (RSP) Agreement shall be reviewed and if approved under §1.5303 of this ~~title~~ Title as amended or superseded and not denied under §23.24 of this ~~chapter~~ Chapter, will be drafted and processed in the order in which it was accepted by to be executed and made effective.

§23.24 Administrative Deficiency Process

(a) The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via an email or if an email address is not provided in the Application, by facsimile to the Applicant. Responses are required to be submitted electronically- **to the Department**. A review of the Applicant's response may reveal that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an administrative deficiency response has been received or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determination regarding the sufficiency of documentation submitted to cure an administrative deficiency as well as the distinction between material and non-material missing information are reserved for the Director of the HOME Program, Executive Director, and Board, as applicable.

(b) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any set-asides, except in response to a direct request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of a HOME award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application, or if the Applicant provides any new unrequested information to cure the deficiency.

(c) Administrative deficiencies for HOME Applications under an open application cycle- **NOFA, including an Application for an RSP Agreement**. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 pm **CTAustin local time** on the fifth business day following the date of the deficiency notice, the application shall be terminated. Applicants that have been terminated may reapply.

(d) Administrative deficiencies for HOME Applications under a ~~competitive application~~ **eyeleCompetitive Application Cycle** NOFA. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 pm on the fifth business day following the date of the deficiency notice, then one (1) point shall be deducted from the selection criteria score for each additional business day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 pm **CTAustin local time** on the seventh business day following the date of the deficiency notice, then the Application shall be terminated.

§23.25 General Threshold and Selection Criteria

(a) **General Threshold**. All Applicants and Applications **to administer a HOME Program award from the Department** must submit or comply with **the following**:

(1) an Applicant certification of compliance with state **rules promulgated by the Department**, and federal laws, rules and guidance governing the HOME Program **as provided in the Application**;

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

(A) authorization of the submission of the Application;

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

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

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

~~(E) name and title of the person with~~ who also has signature authority to execute a ~~contract~~ Contract and grant agreement or loan documents, as applicable; ~~unless otherwise stated.~~

(3) any Applicant requesting \$25,000 or more must be registered in the System for Award Management (SAM) and have a current Data Universal Numbering System (DUNS) number;

(4) an Application fee, ~~to be defined in the NOFA or in this chapter;~~ of thirty dollars per Application;

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

~~(b) Selection Criteria. Applications for competitive awards consistent with a NOFA will be scored and ranked based on the following criteria. Selection criteria for which points are awarded will become a contractual requirement if the Applicant is awarded a Contract.~~

~~(1) Applicants will be required to submit a self-score within the Application. In no event will the points awarded to the Applicant exceed the point value of the self-score in any one selection criterion. Applicants must achieve a minimum staff determined score of fifteen (15) points to be awarded a Contract.~~

~~(2) Applicants may be awarded points under the following selection criteria:~~

~~(A) Homes Built to \geq IRC 2012 Standard. This selection criterion is applicable to Homeowner Rehabilitation Assistance (“HRA”) Applications only. Applications may be awarded five (5) points if all reconstructed or newly constructed homes under the Contract will be built to a code that meets or exceeds IRC 2012 standards.~~

~~(B) Purchased Home Will Meet TMCS. This selection criterion is applicable to Homebuyer Assistance (“HBA”) Applications only. Applications may be awarded five (5) points if all homes for which HBA is provided under the Contract pass an inspection prior to purchase that meets or exceeds TMCS.~~

~~(C) Previous HOME Award. All Applications may receive a maximum of five (5) points for past experience in the HOME Program as follows:~~

~~(i) Applications may be awarded five (5) points if the Applicant administered a HOME Contract awarded within five (5) years of the date that Applications are first accepted under the NOFA. The previous HOME Contract for which points are requested must be of the same assistance type as that proposed in the Application and the Applicant must have met the 100% commitment benchmark of the Contract without requiring an amendment.~~

~~(ii) Applications may be awarded one (1) point for each reservation of the same assistance type which resulted in Commitment of Funds within twelve (12) months of the date that Applications are first accepted under the NOFA, but may not, in any event, receive more than four (4) points under this criteria.~~

~~(iii) Applications may be awarded two (2) points if the Applicant administered a HOME Contract awarded within five (5) years of the date that Applications are first accepted under the NOFA. The previous HOME Contract for which points are requested must be of the same assistance type as that proposed in the Application and all contractually required units must have been completed by the end of the Contract term in accordance with the original Contract or as amended.~~

(D) Administrator Provides Expanded Services. This selection criterion is applicable to Tenant-Based Rental Assistance (TBRA) Applications only. Applicants may receive a maximum of five (5) points for the provision of services available to existing clients within twelve (12) months of the date that Applications are first accepted under the NOFA. Applicant must specify the types of services offered in the Application, and must provide documentation verifying the provision of each service within the specified timeframe. A maximum of one (1) point for each separate service may be awarded. Any service for which points are requested must be identified as provided under one of the following categories: Child Care, Nutrition, Job Training, Health, and Human Services. The services must be uniquely different as determined by the Department. The Department must be able to make a determination that the service stated in the Application was provided by the Applicant and qualifies for the corresponding point(s) when determining the points awarded under this criterion.

(E) Previous Monitoring History. All Applications may receive a maximum of five (5) points for the Applicant's previous monitoring history. The Department will consider the monitoring history for three (3) years preceding the date that Applications are first accepted under the NOFA when determining the points awarded under this criterion. Findings that were subsequently rescinded will not be considered findings for the purpose of this point criterion.

(i) Applications will be limited to a maximum of two (2) points if the Applicant has a monitoring close-out letter that included findings related to violations of procurement requirements.

(ii) Applications will be limited to a maximum of three (3) points if the Applicant has a monitoring close-out letter that included findings on miscalculation of Household income.

(iii) Applications may be awarded a maximum of four (4) points if the Applicant has a monitoring close-out letter that included findings but the findings were not related to miscalculation of Household income or violations of procurement requirements.

(iv) Applications may be awarded a maximum of five (5) points if the Applicant has not received any monitoring findings, including Applicants with no previous monitoring history.

(F) Applicant Staff with Income Eligibility Training. All Applications may receive a maximum of five (5) points if a member of the Applicant's staff that will be involved in administration of the program if awarded, has attended TDHCA's 1st Thursday Income Eligibility training no earlier than one (1) year from the date that Applications are first accepted under the NOFA, or certifies that the staff member will attend TDHCA's 1st Thursday Income Eligibility training prior to submission of a Activity for TDHCA approval. Activities may not be approved under a Contract until the staff member has attended 1st Thursday Income Eligibility training if points are awarded under this criterion.

(G) Section 8 Housing Choice Voucher Availability. This selection criterion is applicable to TBRA Applications only. Applications may be awarded a maximum of five (5) points if the waiting list(s) for the Section 8 Housing Choice Voucher ("HCV") program maintained by the Public Housing Authority ("PHA") with jurisdiction over the service area outlined in the Application exceeds a twelve (12) month wait time as of the date that Applications are first accepted under the NOFA, or if the PHA does not offer rental assistance under the HCV program. The Department must be able to make a determination that PHA's wait time exceeds twelve (12) months through documentation provided in the Application by the Applicant for requested points when determining the points awarded under this criterion.

(H) Lack of Single Family Activities within the Service Area within the Previous Two (2) Years. This selection criterion is applicable to HRA and HBA Applications only.

(i) Applications may be awarded a maximum of five (5) points if TDHCA HOME funds have not been awarded through a competitive award or been provided to an Activity of the same type as the assistance proposed in the Application, and within the service area designated in the Application within two years of the date that Applications are first accepted under the NOFA.

(ii) Applications may be awarded a maximum of four (4) points if TDHCA HOME funds have been committed to Activities of the same type of assistance as that proposed in the Application, and within the service area designated in the Application, if the Applicant was not awarded funds to administer a Contract of the same type of assistance and was not the service provider for Activities submitted under an RSP agreement, within two (2) years of the date that Applications are first accepted under the NOFA.

(I) Program Restricted to First-Time Homebuyers. This selection criterion is applicable to HBA Applications only. Applications may be awarded a maximum of five (5) points if 100% of Households served are first-time homebuyers defined on the Department's Certification of First-Time Homebuyer Status Form.

(J) Program Restricted to Households at or below 60% AMFI. This selection criterion is applicable to HRA and TBRA Applications only. Applications may be awarded a maximum of five (5) points if 100% of Households served will have incomes at or below 60% AMFI for the county in which the Activity will be located.

(K) Priority for Certain Communities. All Applications may receive a maximum of two (2) points if at least one Colonia is included in the service area identified in the Application. Applicants awarded points under this criterion will be contractually required to maintain a service area that includes at least one Colonia as identified on the Secretary of State's website.

§23.26 Contract Benchmarks and Limitations

(a) ~~Project Funds~~Contract Award Funding Limits. ~~Project funds for~~Limits on the total amount of a Contract ~~awards~~award will be established in the NOFA.

(b) Contract Award Terms. ~~With the exception of Tenant Based Rental Homeowner Rehabilitation Assistance, all Activity Contract and Homebuyer Assistance~~ awards will have a Contract term of ~~up to not more than~~ twenty-four (24) ~~one~~ (21) months exclusive of any applicable affordability period or loan term. Tenant-Based Rental Assistance ~~Activity Contract~~ awards will have a Contract term of ~~up to not more than~~ thirty-six (36) months.

(c) Contract Award Benchmarks. Except for ~~Tenant Based Rental Assistance, all Contract~~acquisition only Activities, Administrators must ~~submit to the Department complete Project setup information~~have attained environmental clearance for the ~~Commitment of Funds of all~~contractually required number of Households ~~in accordance with the requirements herein~~served within six (6) months ~~from~~of the effective date of the Contract. ~~Tenant Based Rental Assistance~~ Contract Administrators must submit to the Department complete ~~Project~~Activity setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within ~~twelve (12)~~nine (9) months from the effective date of the Contract. All remaining funds will be deobligated and ~~returned~~reallocated in accordance with Chapter 1 of this Title relating to ~~the Department~~Reallocation of Financial Assistance.

(d) Voluntary deobligation. The Administrator may fully deobligate funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Administrator may partially deobligate funds under a Contract in the form of a written request from the signatory if the letter also deobligates the associated number of targeted Households, funds for administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract. Voluntary deobligation of a Contract does not limit an Administrator's ability to participate in an open application cycle.

(e) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. Administrator must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds and ultimately in termination of the Contract by the Department.

(f) Pre-Contract Costs. ~~The Administrator may be reimbursed for eligible administrative and Project Soft Costs incurred before the effective date of the HOME contract in accordance with 24 CFR §92.212 and at the sole discretion of the Department. In no event will the Department reimburse expenses incurred more than six (6) months prior to the Department's Governing Board approval of the Administrator's award.~~

(1) The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the Contract in accordance with 24 CFR §92.212 and at the sole discretion of

the Department.

(2) A Community Housing Development Organization may be reimbursed for Predevelopment Costs as defined in this Chapter for an Activity funded under Single Family Development.

(3) In no event will the Department reimburse expenses incurred more than six (6) months prior to Governing Board approval of the Administrator's award.

(g) Amendments to Contract Awards will be processed in accordance with Chapter 20 of this Title relating to Single Family Programs Umbrella Rule.

§23.27 Reservation System Participant (RSP) Agreement

(a) Terms of Agreement. ~~The term of an RSP Agreement will have up to a twenty-four (24) month term for all Activities not exceed thirty-six (36) months.~~ Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. ~~Reservations submitted under an RSP agreement will be subject to the provisions of this Chapter in effect as of the date of submission by the Administrator.~~

(b) Limits on Number of Reservations. ~~The number of Homeowner Rehabilitation, Homebuyer Assistance or Single Family Development reservations for an RSP is limited to four (4) Administrators may have no more than five (5) Reservations per county within the RSP's RSP's Service Area submitted to the Department for approval at any given time. The number of except that Tenant-Based Rental Assistance reservations Reservations submitted for approval under an RSP Agreement is limited to twenty (20) thirty (30) at any given time.~~ All required documentation for the ~~reservation of funds Reservation~~ must be submitted to the Department twenty (20) business days prior to the end of RSP Agreement term.

(c) Extremely Low-Income Households. Except for Households served with disaster relief, Homebuyer Assistance or Single Family Development assistance, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30% area median family income for the county in which they will reside without the increase for poverty guidelines or have an income that is lower than the statewide 30% income limit without adjustments to HUD limits.

(d) Match. ~~An RSP Administrators~~ must meet the Match requirement per ~~Project Activity~~ approved for assistance.

(e) Completion of Construction. For ~~Projects Activities~~ involving construction, ~~an RSP must complete construction must be complete~~ within twelve (12) months from the Commitment of Funds for the ~~Project Activity~~.

(f) ~~Extensions. The Executive Director or his/her designee or Household commitment contract term. The term of a Household commitment contract may not exceed 12 months, except that the HOME-Program term for Tenant-Based Rental Assistance may not exceed 24 months.~~

(g) Amendments to Household Commitment contracts may be considered by the Department provided the approval does not conflict with the federal regulations governing use of these funds, or impact federally imposed obligation or expenditure deadlines.

(1) The Division Director may approve ~~one amendments~~ that extend the terms of Household commitment contracts by not more than three (3) ~~month time extension to the Commitment of Funds months~~, except that the term of a Household Commitment contract for Tenant-Based Rental Assistance may not be extended.

(2) The Division Director may approve amendments to ~~allow for the completion of construction, a~~

Household Commitment contract to increase Activity funds within the limitations set forth in this Chapter.

~~(g) An RSP~~ (3) The Executive Director may approve amendments to Household Commitment contracts except amendments to extend the terms of Household Commitment contracts by more than twelve (12) months.

(h) Pre-agreement costs. The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the RSP Agreement in accordance with 24 CFR §92.212 and at the sole discretion of the Department. In no event will the Department reimburse expenses incurred more than six (6) months prior to the effective date of the RSP Agreement.

(i) Administrators must remain in good standing with the Department, the state of Texas, and HUD. If an ~~RSP~~ Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

§23.28 General Administrative Requirements

Unless otherwise provided in this ~~chapter~~ Chapter, the Administrator, or Developer, must comply with the requirements described in paragraphs (1) - (20) of this section, for the administration and use of HOME funds:

(1) complete training, as applicable;

(2) provide all applicable Department Housing Contract System access request information and documentation requirements;

(3) establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the U.S. General Accounting Office, the U.S. Comptroller, the State Auditor of Texas, the Comptroller of Public Accounts of the State of Texas, or any of their duly authorized representatives, throughout the applicable record retention period;

(4) for non-development ~~Activities~~ Contracts, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including:

(A) develop and comply with written procurement selection criteria and committees, including appointment of a procurement officer to manage any bid process;

(B) develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds;

(C) ensure consultant or any procured service provider does not participate in or direct the process of procurement for services. A consultant cannot assist in their own procurement before or after an award is made;

(D) ensure that procedures established for procurement of building construction contractors do not include requirements for the provision of general liability insurance coverage in an amount to exceed the value of the contract and do not give preference for contractors in specific geographic locations;

(E) ensure that building construction contractors are procured in accordance with State and Federal regulations for ~~Single Family~~ single family HOME Activities;

(F) ensure that professional service providers (consultants) are procured using an open competitive procedure and are not procured based solely on the lowest priced bid; and

(G) ensure that any Request for Proposals or Invitation for Bid include:

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

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

(iii) a conflict of interest disclosure;

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

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

(vi) must not have a term of services greater than five years; and

(vii) for competitive proposals, disclose the specific election/evaluation criteria;

(5) in instances where a potential conflict of interest exists, follow procedures to submit a request to the Department to grant an exception to any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate state or local law. No HOME funds will be committed to or reserved to assist a Household until HUD has granted an exception to the conflict of interest provisions;

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

(7) develop and comply with written ~~applicant~~Applicant intake and selection criteria for program eligibility that promote and comply with Fair Housing requirements and the State's One Year Action Plan;

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

(A) provide ~~rehabilitation~~Rehabilitation as an available option to Households, provide Households with a general cost estimate, and to the extent that ~~rehabilitation~~Rehabilitation would not meet the program requirements, explain these program requirements;

(B) unless not allowed by local code, provide replacement of an existing housing unit with a new MHU as an available option; and

(C) explain relocation as an available option under applicable Activities;

(9) determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609, by using the list of income included in HUD Handbook 4350, and excluding from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income;

(10) except for Single Family Development, complete an updated income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the HOME

assistance is provided to the Household. For Single Family Development, complete income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the contract to purchase the housing unit is executed with the Household;

(11) for disaster relief set-aside ~~activities~~Activities, provide evidence that the housing unit occupied by the eligible Household was damaged as a direct result of a ~~natural~~federal, state, or locally declared disaster that occurred less than three years prior to Administrator's Application for a RSP Agreement ~~begin date~~ Contract under which the Household applied for assistance;

(12) for single family Activities involving construction, perform initial inspection in accordance with Chapter 20 of this ~~title~~Title (relating to Single Family Programs Umbrella Rule). Property inspections must include photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms. The inspection must be signed and dated by the inspector and the Administrator;

(13) submit a substantially complete request for the Commitment or Reservation of Funds, loan closing preparation, and for disbursements. Administrators must upload all required information and verification documentation in the Housing Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. Expenses for which reimbursement is requested must be documented as incurred. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of ten (10) business days beginning at the start of the first business day following the date the Administrator or Developer is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds;

(14) submit signed program documents timely as may be required for the completion of a Commitment or Reservation of Funds, and for closing preparation of the loan or grant documents. Department reserves the right to cancel or terminate ~~Projects~~Activities when program documents are not executed timely, in the Department's sole and reasonable discretion;

(15) not proceed or allow a contractor to proceed with construction, including demolition, on any ~~Project~~Activity or development without first completing the required environmental clearance procedures, preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable;

(16) submit any Program Income received by the Administrator or Developer to the Department within ten (10) business days of receipt; any fund remittance to the Department, including refunds, must include a written explanation of the return of funds, the Contract number, name of Administrator or Developer, ~~Project~~Activity address and ~~Project~~Activity number, and must be sent to the Department's accounting division;

(17) submit required documentation; for project completion reports no later than sixty (60) days after the completion of the ~~Project~~Activity;

(18) for Contract awards, submit certificate of Contract Completion within ten (10) business days of the Department's request;

(19) submit to the Department reports or information regarding the operations related to HOME funds provided by the Department; ~~and~~

~~(20)~~(20) submit evidence with the final draw for construction related activities that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents;

(21) provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price; and

(22) if required by state or federal law, place the appropriate bonding requirement in any contract or subcontract entered into by the Administrator or Developer in connection with a HOME award.

§23.29 Resale and Recapture Provisions

(a) Recapture is the primary method the Department will use to recoup HOME funds under 24 CFR §92.254(a)(5)(ii).

(b) The Department has established the recapture provisions described in paragraphs (1) - (4) of this subsection to ensure affordability as defined in 24 CFR §92.254(a)(5)(ii).

(1) In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the entire HOME investment is subject to recapture. The Department will include any loan payments previously made when calculating the amount subject to recapture. Loan forgiveness is not the same thing as loan payments for purposes of this subsection.

(2) In the event that a federal affordability period is required and the unit is sold, including through a short sale or foreclosure, prior to the end of the affordability period, the Department will recapture the ~~shared~~ **available amount** of net proceeds ~~available~~ based on the requirements of 24 CFR §92.254 and as outlined in the State's One Year Action Plan.

(3) The Household can sell the unit to any willing buyer at any price. In the event of sale to a qualified low-income purchaser of a HOME-assisted unit, the qualified low-income purchaser may assume the existing HOME loan and recapture obligation entered into by the original buyer if no additional HOME assistance is provided to the subsequent homebuyer. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in 24 CFR §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.

(4) If there are no net proceeds from the sale, no repayment will be required of the Household and the balance of the loan shall be forgiven as outlined in the State's applicable One Year Action Plan.

(c) The Department has established the resale provisions described in paragraphs (1) - (7) of this subsection, in the event that the Department must impose the resale provisions of 24 CFR §92.254(a)(i).

(1) Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, and no member of the Household is occupying the property as their Principal Residence.

(2) In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the HOME investment must be repaid.

(3) In the event that a federal affordability period is required and the assisted property is sold, ~~foreclosed,~~ or transferred in lieu of foreclosure to a qualified low income buyer at an affordable price, the HOME loan balance shall be transferred to the subsequent qualified buyer and the affordability period shall remain in force to the extent allowed by law.

(4) The resale provisions shall remain in force from the date of loan closing until the expiration of the required affordability period.

(5) The Household is required to sell the home at an affordable price to a reasonable range of low income

homebuyers that will occupy the home as their Principal Residence. Affordable to a reasonable range of low-income buyers is defined as targeting Households that have income between 70 and 80 percent of the area median family income and meet all program requirements.

(A) The seller will be afforded a fair return on investment defined as the sum of down payment and closing costs paid from the initial seller's cash at purchase, closing costs paid by the seller at sale, the principal payments only made by the initial homebuyer in excess of the amount required by the loan, and any documented capital improvements in excess of \$500.

(B) Fair return on investment is paid to the seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then the appropriate partial fair return shall remain in force.

(6) The appreciated value is the affordable sales price less first mortgage debt less fair return.

(A) If appreciated value is zero, or less than zero, then no appreciated value exists.

(B) The initial homebuyer's investment of down payment and closing costs divided by the Department's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer or persons as otherwise directed by law. The balance of appreciated value shall be paid to the Department.

(7) The property qualified by the initial Household will be encumbered with a lien for the full affordability period.

(d) In the event that a federal affordability period is not required and the housing unit transfers by devise, descent, or operation of law upon the death of the assisted homeowner, forgiveness of installment payments under the loan may continue until maturity or the grant amount under the conditional grant agreement may be forgiven, if the new Household qualifies for assistance in accordance with this ~~subchapter~~Subchapter.

(e) Forgiveness of installment payments under the loan may continue until maturity or the grant amount under conditional grant agreement may be forgiven if the housing unit is sold by the decedent's estate to a purchasing Household that qualifies for assistance in accordance with this ~~chapter~~Chapter.

(f) Grants subject to conditional grant agreements may be forgiven annually during the Department's affordability period and are not subject to recapture of the entire grant amount in the event the property is no longer the Principal Residence of any Household member. The outstanding amount owed will be based on the remaining affordability term. ~~SUBCHAPTER C HOMEOWNER REHABILITATION ASSISTANCE PROGRAM~~

SUBCHAPTER C HOMEOWNER REHABILITATION ASSISTANCE

§23.30 Homeowner Rehabilitation Assistance (HRA) ~~Program~~ Threshold and Selection Criteria

(a) Match requirement. Excluding Applications under the disaster relief and persons with disabilities set asides, Match shall be required based on the tiers described in paragraphs (1) and (2) of this subsection:

(1) Zero percent of Direct ~~Project~~Activity Costs, exclusive of Match, is required as Match:

(A) when the service area includes the entire unincorporated area of a county and where the population of Administrator's service area is less than or equal to 20,000 persons; or

(B) when the service area does not include the entire unincorporated area of a county and the population of the Administrator's service area is less than or equal to 3,000 persons.

(2) One percent of Direct ~~Project~~Activity Costs, exclusive of Match, is required as Match for every 1,000 in population to a maximum of 15 percent.

(b) The Department shall use population figures from the most recently available U.S. census bureau's American Community Survey (ACS) **at the time of Application acceptance** to determine the applicable Match. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA ~~and may be different for each Activity.~~

(c) Documentation is required of a commitment of at least \$40,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

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

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

(d) Selection criteria for this activity will be outlined in the NOFA.

§23.31 Homeowner Rehabilitation Assistance (HRA) ~~Program~~General Requirements

~~(a) Eligible Projects are limited to:~~(a) Program funds may be used for the following under this Subchapter:

(1) the Rehabilitation or Reconstruction of existing owner-occupied housing on the same site. The Rehabilitation of a Manufactured Housing Unit (MHU) is not an eligible ~~Project~~use of funds;

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

(3) the replacement of existing owner-occupied housing with an MHU or New Construction of site-built housing on another site contingent upon written approval of the Department;

(4) if a housing unit is uninhabitable, within the previous five (5) years from requested assistance, as a result of a natural or man-made disaster or a condemnation order from the unit of local government, or presents an imminent threat to the life, health, or safety of occupants as determined by the local government with jurisdiction over the property, the Household ~~is~~may be eligible for the New Construction of site-built housing or an MHU under this section provided the assisted Household documents that the housing unit was previously their Principal Residence through evidence of a homestead exemption from the local taxing jurisdiction and Household certification. If a housing unit is destroyed due to a disaster (housing unit may no longer be standing on the site), that unit is eligible for ~~reconstruction~~Reconstruction provided that the HOME funds are committed within twelve (12) months of the date of destruction; or

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

(b) If a housing unit has an existing mortgage loan and Department funds are provided in the form of a loan, the Department will require a first lien position if the existing mortgage loan has an outstanding balance that is less than the investment of HOME funds and any of the statements described in paragraphs (1) - (3) of this subsection are true:

(1) a federal affordability period is required; or

(2) any existing mortgage has been in place for less than three (3) years from the date the Household applies for assistance; or

(3) the HOME loan is structured as a repayable loan.

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

(d) Direct ~~Project~~Activity Costs, exclusive of Match funds, and are limited to:

(1) Reconstruction and New Construction of site-built housing: the lesser of \$7890 per square foot of conditioned space or \$85100,000; or for Households of five or more Persons the lesser of \$7890 per square foot of conditioned space or \$90110,000 for a four-bedroom unit;

(2) replacement with energy efficient MHU: \$75,000;

(3) ~~rehabilitation~~Rehabilitation that is not Reconstruction: \$4060,000; and

(4) refinancing of existing mortgages: in addition to the costs limited under paragraphs (1) - (3) of this subsection, the cost to refinance an existing mortgage is limited to \$35,000. To qualify, a Household's current total housing payment must be greater than 30 percent of their monthly gross income or their total monthly recurring debt payments must be greater than 45 percent of their gross monthly income. HOME funds may not be utilized to refinance loans made or insured by any federal program.

(e) In addition to the Direct ~~Project~~Activity Costs allowable under subsection (d) of this section, a sum not to exceed \$510,000 maybe requested and if approved, used to pay for any of the following as applicable:

(1) necessary environmental mitigation as identified during the Environmental review process; ~~or~~

~~(2) installation of an aerobic septic system; or~~

(3) homeowner requests for accessibility features.

(f) ~~Project Soft Costs~~Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Reconstruction or New Construction: no more than \$9,000 per housing unit;

(2) replacement with an MHU: no more than \$3,500 per housing unit;

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

(4) third-party ~~Project Soft Costs~~Activity soft costs related to ~~requirements~~costs incurred in connection with an Activity under this section, such as appraisals, title reports or insurance, tax certificates, recording fees, ~~and~~ surveys, and first year hazard and flood insurance are not subject to a maximum per ~~Project~~Activity.

(g) Funds for administrative costs are limited to no more than 4 percent of the Direct ~~Project~~Activity

Costs, exclusive of Match funds.

(h) In the instances described in paragraphs (1) - (4) of this subsection, the assistance to an eligible Household shall be in the form of a loan in the amount of the Direct ~~Project~~Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(1) An MHU being replaced with newly constructed housing (site-built) on the same site;

(2) Any housing unit being replaced on another site;

(3) Any housing unit that is being relocated out of the floodplain or replaced due to uninhabitability as allowed under subsection (a)(4) of this section; and

(4) Any ~~Project~~Activity that requires a federal affordability period.

(i) For any ~~Project~~Activity involving refinancing described in subsection (d)(4) of this section, the HOME funds used for refinancing shall be structured as a fully amortizing, repayable loan at zero percent interest. The loan term shall be calculated by setting the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance), equal to 20 percent of the Household's gross monthly income. The term shall not exceed thirty (30) years. Total debt service (back-end ratio) may not exceed 45 percent. Any Direct ~~Project~~Activity Costs, exclusive of refinancing costs and Match funds, shall be structured as a deferred, forgivable loan with a 15-year term.

(j) In all other instances not described in subsections (h) and (i) of this section, the assistance to an eligible Household will be in the form of a grant agreement with a 5-year affordability period.

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this ~~chapter~~Chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, ~~reconstruction~~Reconstruction and ~~new construction~~New Construction housing is required to meet §92.251(a)(2) as applicable. Housing that is Rehabilitated under this ~~chapter~~Chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, ~~rehabilitation~~Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(m) Each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

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

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

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

(n) Housing proposed to be constructed under this ~~Activity~~Subchapter must meet the requirements of Chapters 20 and 21 of this ~~title~~Title and must be certified by a licensed architect or engineer.

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

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

§23.32 Homeowner Rehabilitation Assistance (HRA) Administrative Requirements

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (17) of this subsection:

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

(2) a budget that includes the amount of ~~Project~~Activity funds specifying the acquisition costs, construction costs, ~~Soft Costs~~soft costs and administrative costs requested, a maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct ~~Project~~Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) when assistance is provided in the form of a loan, provide written consent from all Persons who have a valid lien or ownership interest in the Property for the ~~rehabilitation or reconstruction~~ ~~Projects~~Rehabilitation or Reconstruction Activities;

(8) in the instance of relocation and in accordance with §23.31(a)(3) of this ~~chapter~~(Chapter relating to ~~Homeowner Rehabilitation Assistance (HRA) Program~~ General Requirements), the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME ~~Project~~Activity funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for a ~~Project~~Activity under this paragraph, the Administrator Match obligation may be reduced by the cost of such demolition without any Contract amendment;

(9) identification of any Lead-Based Paint (LBP);

(10) for housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, a quote for the cost of flood insurance and certification from the

Household that they understand the flood insurance requirements;

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

(12) if applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(13) a title commitment or policy or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or ninety-nine (99) year leasehold. For loan projects, the ~~effective date~~ title commitment must be no ~~older~~more than 30 days ~~old~~as prior to of the date of project submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes. For assistance provided in the form of a grant agreement, a title report may be submitted in lieu of a title commitment or policy. In instances of an MHU, a Statement of Ownership and Location (SOL) must be submitted. Together, these documents must evidence the definition of Homeownership is met;

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

(15) in the instances of replacement with an MHU, information necessary to draft loan documents or grant agreements to issue SOL;

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

(17) any other documentation necessary to evidence that the ~~Project~~Activity meets the program requirements.

(b) Loan closing or grant agreement. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post ~~rehabilitation~~Rehabilitation or ~~reconstruction~~Reconstruction value of improvements for ~~Projects~~Activities involving construction prior to the issuance of grant or loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (12) of this subsection, may be required with a request for disbursement:

(1) for construction costs associated with a loan, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the ~~date of construction completion~~;Construction Completion Date;

(2) for construction costs associated with a grant agreement, an interim lien waiver or final lien waiver. For release of retainage the release on final payment must be dated at least forty (40) days after the ~~date of construction completion~~Construction Completion Date;

(3) if applicable, ~~up to a~~ maximum of 50 percent of ~~Project~~Activity funds for a ~~Project~~Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of ~~Project~~Activity funds disbursed;

(4) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and

property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

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

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

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

(8) the request for funds for administrative costs must be proportionate to the amount of Direct ~~Project~~Activity Costs requested or already disbursed;

(9) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after ~~completion of construction~~the Construction Completion Date;

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

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

(12) for costs associated with ~~Title Policies~~title policies charged as ~~Project~~Activity costs, the ~~Title Policy~~title policy must be submitted with the retainage request. ~~SUBCHAPTER D HOMEBUYER ASSISTANCE PROGRAM~~

SUBCHAPTER D HOMEBUYER ASSISTANCE

§23.40 Homebuyer Assistance (HBA) Threshold and Selection Criteria

(a) Except for Applications under the disaster relief and Persons with Disabilities set-asides, the amount of Match required must be at least 5 percent of Direct ~~Project Costs, exclusive of Match, requested. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA and may be different for each Activity.~~Activity Costs, exclusive of Match, requested.

(b) Documentation of a commitment of at least \$20,000 in cash reserves to facilitate administration of the

program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

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

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

~~(c) Selection Criteria for this activity will be outlined in the NOFA.~~

§23.41 Homebuyer Assistance (HBA) ~~Program~~ General Requirements

~~(a) Eligible activities~~ (a) Program funds under this Subchapter are limited to the acquisition or acquisition and Rehabilitation for accessibility modifications of single family housing units.

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

~~(c) First lien purchase loans must comply with the requirements described in paragraphs (1)–(7) of this subsection:~~

~~(1) No adjustable rate mortgage loans or temporary interest rate buy-down loans are allowed;~~

~~(2) No first lien mortgage loans with a total loan to value equal to or greater than 100 percent are allowed;~~

~~(3) No subprime mortgage loans are allowed;~~

~~(4) For conforming mortgage loans, the debt to income ratio (back-end ratio) may not exceed 45 percent;~~

~~(5) Fees charged by third party mortgage lenders are limited to the greater of 2 percent of the mortgage loan amount or \$3,500, including but not limited to origination, application, and/or underwriting fees. Fees associated with the origination of Single Family Mortgage Revenue Bond and Mortgage Credit Certificate programs will not be included in the limit. Fees paid to parties other than the first lien lender will not be included in the limit. Fees collected by the first lien lender at closing to be paid to other parties by the first lien lender that are supported by an invoice will not be included in the limit;~~

~~(6) No Identity of Interest relationship between the lender and the Household is allowed; and~~

~~(7) If an Identity of Interest exists between the Household and the seller, the Department may require additional documentation that evidences that the sales price is equal to or less than the appraised value of the property as documented by a Third Party appraisal ordered by the first lien lender. If an Identity of Interest exists between the builder and Administrator, the Administrator must provide documentation that evidences that the sales price does not provide for a profit of more than 15 percent of the total hard construction costs and does not exceed the current appraised value as documented by a Third Party appraisal ordered by the first lien lender.~~

~~(d) Direct Project~~ (c) Direct Activity Costs, exclusive of Match funds, are limited to:

(1) acquisition and closing costs: the lesser of \$20,000 or the amount necessary as determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than 20 percent of the Household's gross monthly income based on a thirty (30) year amortization schedule. If the estimated housing payment will be less than 20 percent, the Department shall reduce the amount of downpayment assistance to the homebuyer such that the total estimated housing payment is no less than 20 percent of

the homebuyer's gross income; or

(2) closing costs and downpayment: the lesser of \$6,000 or the total estimated settlement charges shown on the ~~good faith estimate~~ closing disclosure that are paid by the buyer at closing which are not paid by the buyer's contribution. Households assisted under this paragraph who, at the time of application, have assets which may be liquidated without a federal income tax penalty and which exceed three months of estimated principal, interest, property tax, and property insurance payments for the unit to be purchased as shown in the truth-in-lending statement must contribute the excess funds to the total estimated settlement charges as shown on the good faith estimate; and

(3) ~~rehabilitation~~ Rehabilitation for accessibility modifications: \$20,000.

(4) No funds shall be disbursed to the assisted Household at closing. The HOME assistance shall be reduced in the amount necessary to prevent the Household's direct receipt of funds if the closing disclosure shows funds to be provided to the buyer at closing.

(5) Total assistance to the Household must be in an amount of no less than \$1,000. Households who are not eligible for at least \$1,000 in total homebuyer assistance are ineligible for assistance under this ~~subchapter~~ Subchapter.

(~~e~~) ~~Project Soft Costs~~ (d) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

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

(2) Rehabilitation for accessibility modifications: \$5,000 per housing unit.

(~~f~~) Funds for Administrative costs are limited to no more than 4 percent of the Direct ~~Project~~ Activity Costs, exclusive of Match funds.

(~~g~~) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct ~~Project~~ Activity Costs, excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(~~h~~) Any forgiveness of the loan must follow §23.2930 of this ~~chapter~~ Chapter.

(~~i~~) To ensure affordability, the Department will impose the recapture provisions established in this ~~chapter~~ Chapter.

(~~j~~) Housing that is Rehabilitated under this ~~chapter~~ Chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, ~~rehabilitation~~ Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule, and Chapter 21 of this ~~title~~ Title. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

§23.42 Homebuyer Assistance (HBA) Administrative Requirements

(a) Reservation of Funds. The Administrator must submit true and complete information, certified as such, with a request for the Reservation of Funds, as described in paragraphs (1) - (7) of this subsection:

(1) head of Household name;

(2) a budget that includes the amount of ~~Project~~ Activity funds specifying the acquisition costs, construction costs, ~~Soft Costs~~ soft costs and administrative costs requested. A maximum of 5 percent of

hard construction costs for contingency items, proposed Match to be provided, evidence that ~~ProjectActivity~~ and ~~Soft-Costsoft cost~~ limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) a copy of the Household's intake application on a form prescribed by the Department;

(4) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(5) if applicable, documentation to address or resolve any potential Conflict of Interest, Identity of Interest, or duplication of benefit;

(6) if applicable, construction cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion; and

(7) any other documentation necessary to evidence that the ~~ProjectActivity~~ meets the program requirements.

(b) Commitment of Funds. In addition to the documents required under subsection (a) of this section, the Administrator must submit the documents described in paragraphs (1) - (8) of this subsection, with a request for the Commitment of Funds within ninety (90) days of approval of the Reservation:

(1) address of housing unit for which assistance is being requested;

(2) verification of environmental clearance;

(3) identification of Lead-Based Paint (LBP);

(4) for housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(5) a title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. ~~The effective date of the title commitment must be no more than 30 days prior to the date of project submission.~~ Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(6) executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(7) appraisal which includes post ~~rehabilitation~~Rehabilitation or ~~reconstruction~~Reconstruction improvements for ~~Projects~~Activities involving construction; and

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

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (10) of this subsection, may be required with a request for disbursement:

(1) For construction costs that are a part of a loan subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the date ~~of construction completion~~ **Construction Completion Date**;

(2) If applicable, ~~up to a maximum of~~ 50 percent of **ProjectActivity** funds for a **ProjectActivity** may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of **ProjectActivity** funds disbursed;

(3) The property inspection must be signed and dated by the inspector and the Administrator or Developer;

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

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

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

(7) The request for funds for Administrative costs must be proportionate to the amount of Direct **ProjectActivity** Costs requested or already disbursed;

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

(9) For Activities involving Rehabilitation, include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after ~~completion of construction~~ **the Construction Completion Date** and until submission of documentation required for **ProjectActivity** completion reports; and

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

CONTRACT FOR DEED PROGRAM

SUBCHAPTER E CONTRACT FOR DEED

§23.50 Contract for Deed (CFD) Threshold and Selection Criteria

Documentation of a commitment of at least \$40,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

- (1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or
- (2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this section.

§23.51 Contract for Deed (CFD) ~~Program~~General Requirements

~~(a) Eligible activities are limited to:~~ (a) Program funds may be used for the following under this Subchapter:

- (1) acquisition or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance; or
 - (2) refinance with Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance provided construction costs exceed the amount of debt that is to be refinanced;
- (b) An MHU is not an eligible property type for Rehabilitation. MHUs must be installed according to the manufacturer's installation instructions and in accordance with Federal and State laws and regulations.
- (c) The Household's income must not exceed 60 percent (AMFI) and the Household must complete a homebuyer counseling program/class.
- (d) The property assisted must be located in a Colonia as defined in Texas Government Code, Chapter 2306. The Colonia must have a Colonia Classification Number, as assigned by the Office of the Texas Secretary of the State.
- (e) The Department will require a first lien position.
- (f) Direct ~~Project~~Activity Costs, exclusive of Match funds, are limited to:
- (1) refinance, acquisition and closing costs: \$35,000. In the case of a contract for deed housing unit that involves the refinance or acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed \$40,000 of assistance;
 - (2) Reconstruction and New Construction of site-built housing: the lesser of \$7890 per square foot of conditioned space or \$85100,000, or for Households of five or more Persons the lesser of \$7890 per square foot of conditioned space or \$90110,000 for a four-bedroom unit;
 - (3) replacement with an energy efficient MHU: \$75,000; and
 - (4) ~~rehabilitation~~Rehabilitation that is not Reconstruction: \$4060,000.
- (g) In addition to the Direct ~~Project~~Activity Costs allowable under subsection (d) of this section, a sum not to exceed \$510,000 may be used to pay for any of the following:

(1) necessary environmental mitigation as identified during the Environmental review process; ~~or~~

~~(2) installation of an aerobic septic system; or~~

(3) homeowner requests for accessibility features.

(h) ~~Project Soft Costs~~Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

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

(2) Reconstruction or New Construction: no more than \$9,000 per housing unit;

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

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

(i) Funds for administrative costs are limited to no more than 4 percent of the Direct ~~Project~~Activity Costs, exclusive of Match funds.

(j) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct ~~Project~~Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254. For refinancing activities, the minimum loan term and affordability period is 15 years, regardless of the amount of HOME assistance.

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this ~~chapter~~Chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet §92.25 1(a)(2) as applicable. Housing that is Rehabilitated under this ~~chapter~~Chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, ~~rehabilitation~~Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

(m) Each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

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

(3) each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet

that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space; and

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

(n) Housing proposed to be constructed under this ~~Activity~~**Subchapter** must meet the requirements of Chapters 20 and 21 of this ~~title~~**Title** and must be certified by a licensed architect or engineer.

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

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

§23.52 Contract for Deed (CFD) Administrative Requirements

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs

(1) - (15) of this subsection:

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

(2) a budget that includes the amount of ~~Project~~**Activity** funds specifying the acquisition costs, construction costs, ~~Soft Costs~~**soft costs** and administrative costs requested, a maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that ~~Project~~**Activity** and ~~Soft Costs~~**soft costs** limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) identification of Lead-Based Paint (LBP);

(8) for housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(9) if applicable, documentation to address or resolve any potential Conflict of Interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(10) appraisal which includes post ~~rehabilitation~~**Rehabilitation** or ~~reconstruction~~**Reconstruction** improvements for ~~Projects~~**Activities** involving construction;

(11) a title commitment to issue a title policy ~~not older than thirty (30) days when submitted~~ that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien

or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. **The effective date of the title commitment must be no more than 30 days prior to the date of Activity submission.** Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

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

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

(14) A copy of the recorded contract for deed and a current payoff statement; and

(15) any other documentation necessary to evidence that the **ProjectActivity** meets the program requirements.

(b) Disbursement of funds. The Administrator must comply all of the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (11) of this subsection may be required with a request for disbursement:

(1) for construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the ~~date of construction completion~~ **Construction Completion Date**;

(2) if applicable, ~~up to a~~ **maximum of** 50 percent of **ProjectActivity** funds for a **ProjectActivity** may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of **ProjectActivity** funds disbursed;

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

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

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

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

(7) the request for funds for administrative costs must be proportionate to the amount of Direct ~~Project~~Activity Costs requested or already disbursed;

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

(9) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after ~~completion of construction~~the Construction Completion Date;

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

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

SUBCHAPTER F TENANT-BASED RENTAL ASSISTANCE

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

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

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

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this section--; and

(3) ~~evidence that the service area for a Contract or RSP Agreement includes the entire rural or urban area of a county as identified in the Application, excluding Participating Jurisdictions. However, service areas must include Participating Jurisdictions as applicable if the Agreement includes access to the Persons with Disabilities set-aside~~

§23.61 Tenant-Based Rental Assistance (TBRA) ~~Program~~General Requirements

(a) The Household must participate in a self-sufficiency program.

(b) The amount of assistance will be determined using the Housing Choice Voucher method.

(c) Households certifying to zero income must also complete a questionnaire which includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.

(d) The minimum Household contribution toward gross monthly rent must be ten percent of the

Household's gross monthly income.

(e) ~~Project~~Activity funds are limited to:

(1) rental subsidy: Each rental subsidy term is limited to no more than twenty-four (24) months. Total lifetime assistance to a Household may not exceed thirty-six (36) month cumulatively, except that ~~up to an additional~~ a maximum of twenty-four (24) additional months of assistance, for a total of sixty (60) months cumulatively may be approved if:

(A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and

(B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; and

(C) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and

(D) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.

(2) security deposit: no more than the amount equal to two (2) month's rent for the unit.

(3) utility deposit in conjunction with a TBRA rental subsidy.

(f) The payment standard is determined at the date of assistance. The payment standard utilized by the Administrator must be:

(1) for metropolitan counties and towns, the current U.S. Department of Housing and Urban Development (HUD) "Small Area Fair Market Rent for the Housing Choice Voucher Program" ~~at the time the household is income certified (or;~~

(2) for nonmetropolitan counties and towns, the ~~rental coupon is executed,~~ a current HUD Fair Market Rent for the Housing Choice Voucher Program;

(3) for a HOME assisted unit, the current applicable HOME rent; or

(4). The Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or ~~supported by HUD's Small Area Fair Market Rents (SAFMR). Administrators requesting to use HUD's SAFMR must agree to use the SAFMR for all Households under the Contract or Reservation System Agreement. For HOME-assisted units, the payment standard must be no greater than the current HOME rent applicable for the unit.~~ documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in Section 1.204 of this Title for a specific household..

(g) The lease agreement start date must correspond to the date of the TBRA rental coupon contract. ~~The dates may be different only upon prior approval of the Executive Director or his/her designee.~~

(h) ~~Project Soft Costs~~Activity soft costs are limited to \$1,200 per Household assisted for determining ~~household~~Household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area.

(i) Funds for administrative costs are limited to 4 percent of Direct ~~Project~~Activity Costs, excluding Match funds. Funds for administrative costs may be increased an additional 1 percent of Direct ~~Project~~Activity Costs if Match is provided in an amount equal to 5 percent or more of Direct ~~Project~~Activity Costs.

(j) Rental units must be inspected prior to occupancy, annually upon Household recertification, and must comply with HQS established by HUD.

(k) Administrators must have a written agreement with Owner that the Owner will notify the Administrator within one (1) month if a tenant moves out of an assisted unit prior to the lease end date.

(l) Administrators must maintain ~~its waitlist~~Written Policies and Procedures established for the HOME Program in accordance with ~~the Tenant Selection Criteria established in §~~Section 10.610 of this ~~title~~Title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in (n) of this Section regarding the Violence Against Women Act (if in conflict with the provisions in Section 10.610 of this Title) will govern.

(m) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the project.

(n) Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three (3) calendar days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

§23.62 Tenant-Based Rental Assistance (TBRA) Administrative Requirements

(a) Commitment or Reservation of Funds. The Administrator must submit the documents described in paragraphs (1) - (9) of this subsection, with a request for the Commitment or Reservation of Funds:

- (1) head of Household name and address of housing unit for which assistance is being requested;
- (2) a budget that includes the amount of Direct ~~Project~~Activity Costs, ~~Project Soft Costs~~Activity soft costs, administrative costs requested, Match to be provided, evidence that Direct ~~Project~~Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;
- (3) verification of environmental clearance;
- (4) a copy of the Household's intake application on a form prescribed by the Department;
- (5) certification of the income eligibility of the Household signed by the Administrator, and all Household members age 18 or over, and including the date of the income eligibility determination. Administrator must submit documentation used to determine the income and rental subsidy of the Household;
- (6) identification of Lead-Based Paint (LBP);
- (7) if applicable, documentation to address or resolve any potential conflict of interest or duplication of benefit;
- (8) project address within ninety (90) days of preliminary set up approval, if applicable; and
- (9) any other documentation necessary to evidence that the ~~Project~~Activity meets the Program Rules.

(b) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (8) of this subsection for a request for disbursement of funds. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (8) of this subsection may be required with a request for disbursement:

- (1) If required or applicable, ~~up to a maximum of~~ 50 percent of Direct ~~Project~~Activity Costs for a ~~Project~~Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Direct ~~Project~~Activity Costs disbursed;
- (2) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;
- (3) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to the Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;
- (4) With the exception of ~~up to a maximum of~~ 25 percent of the total funds available for administrative costs, the request for funds for administrative costs must be proportionate to the amount of Direct ~~Project~~Activity Costs requested or already disbursed;
- (5) Requests may come in ~~up to not more than~~ ten (10) days in advance of the first day of the following month;
- (6) For final disbursement requests, submission of documentation required for ~~Project~~Activity completion reports;

(7) Household commitment contracts may be signed after the end date of an RSP only in cases where the Department has approved a project set-up with a project address to be determined at a later time; and

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

SUBCHAPTER G SINGLE FAMILY DEVELOPMENT PROGRAM

§23.70 Single Family Development (SFD) Threshold and Selection Criteria

All Applicants and Applications must submit or comply with this section.

(1) An Application for Community Housing Development Organization (CHDO) certification. Applicants must meet the requirement for CHDO certification as defined in 10 TAC, Chapter 13, §13.2 of this Title relating to the Multifamily Direct Loan Rule.

(2) If the total of the Department's loan equals more than 50 percent of the total development cost, except for developments also financed with U.S. Department of Agriculture (USDA) funds, the Applicant must provide:

(A) evidence of a line of credit or equivalent tool of at least \$80,000 from a financial institution that will be available for use during the proposed development activities; or

(B) a letter from a third party Certified Public Accountant (CPA) verifying the capacity of the owner or developer to provide at least \$80,000 as a short term loan for development; and

(C) a letter from the developer's or owner's bank(s) confirming funds amounting to at least \$80,000 is available.

(3) A proposed development plan that is consistent with the requirements of this ~~chapter~~Chapter, all other federal and state rules, and includes:

(A) a floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition;

(B) a FEMA Issued Flood Map that identifies the location of the proposed site(s);

(C) letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable;

(D) documentation of site control of each proposed lot: A recorded warranty deed with corresponding executed settlement statement; or a contract or option for the purchase of the proposed lots that is valid for at least one hundred-twenty (120) days from the date of application submission; and

(E) an "as vacant" appraisal of at least one of the proposed lots if: The Applicant has an Identity of Interest with the seller or current owner of the property; or any of the proposed property is part of a newly developed or under-development subdivision in which at least three other third-party sales cannot be evidenced. The purchase price of any lot in which the current owner has an Identity of Interest must ~~comply with the Identity of Interest transfer requirements in Chapter 10, Subchapter D of this title (relating to Underwriting and Loan Policy).~~ not exceed the appraised value of the vacant lot at the time of Activity submission. The appraised value of the lot may be included in the sales price for the homebuyer transaction;

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

§23.71 Single Family Development (SFD) ~~Program~~General Requirements

(a) ~~Eligible activities include~~Program funds under this Subchapter may be used for the acquisition and New Construction or acquisition and Rehabilitation of single family housing. ~~Single family housing units assisted with HOME funds must comply with the required that complies with~~ affordability requirements as defined at 24 CFR §92.254.

(b) ~~This Activity is a CHDO eligible activity.~~Program funds under this Subchapter are only eligible to be administered by a CHDO certified as such by the Department. A separate grant for CHDO operating expenses may be awarded to CHDOs that receive a Contract award if funds are provided for this purpose in the NOFA. A CHDO may not receive more than one grant of CHDO operating funds in an amount not to exceed \$50,000 within any one year period, and may not draw more than \$25,000 in CHDO operating funds in any 12 month period from any source, including CHDO operating funds from other HOME Participating Jurisdictions.

(c) The Household's income must not exceed 80 percent area median family income (AMFI) and the Household must complete a homebuyer counseling program/class. The Household must be income qualified as of the date of signature of the homebuyer's purchase contract.

(d) Each unit must meet the design and quality requirements described in paragraphs (1) - (5) of this subsection:

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

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

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

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

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

(e) Housing proposed to be constructed under this ~~Activity~~Subchapter must meet the requirements in Chapters 20 and 21 of this ~~title~~Title and ~~plans submitted with the Application~~ must be certified by a licensed architect or engineer.

(f) The total hard construction costs are limited as described in paragraphs (1) and (2) of this subsection:

(1) Reconstruction and New Construction of site-built housing: The hard construction costs are limited to ~~\$7890~~ per square foot of conditioned space and ~~\$85100,000~~ or for Households of five or more Persons ~~\$90~~ the lesser of \$90 per square foot of conditioned space or \$110,000 for a four-bedroom unit; and

(2) Rehabilitation that is not Reconstruction: ~~\$4060,000~~.

(g) In addition to the Direct ~~Project~~Activity Costs allowable under subsection (d) of this section, a sum not to exceed ~~\$510,000~~ may be used to pay for any of the following:

(1) necessary environmental mitigation as identified during the Environmental review process; ~~or~~

~~(2) installation of an aerobic septic system; or~~

(3) homeowner requests for accessibility features.

(h) Developer fees (including consulting fees) are limited to 15 percent of the total hard construction costs. ~~The developer fee will be reduced by 1% per month or partial month that the construction period exceeds the original term of the construction period financing.~~

(i) General Contractor Fees are limited to 15 percent of the total hard construction costs. The General Contractor is defined as one who contracts for the construction or ~~rehabilitation~~Rehabilitation of an entire development ~~Project~~Activity, rather than a portion of the work. The General contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in paragraphs (1) and (2) of this subsection:

(1) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(2) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(j) Construction period financing for each unit shall be structured as a zero percent interest loan with a ~~nine (9)~~twelve (12) month term, or with a term that coincides with the end date of the Household commitment contract under a Reservation System Participation Agreement. The maximum construction loan amount may not exceed the total development cost less developer fees/profit, homebuyer closing costs, and ineligible ~~Project~~Activity costs. Prior to construction loan closing, a sales contract must be executed with a qualified homebuyer.

(k) In the instance that the Combined Loan to Value equals more than 100 percent of the appraised value, the portion of the sales price that exceeds 100 percent of the appraised value will be granted to the developer to buy down the purchase price if the homebuyer is receiving downpayment assistance or a first lien mortgage from the Department. The cost to the Developer to close the homebuyer loan may be provided as a grant to the Developer.

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

(1) the downpayment assistance is limited to ten (10) percent of the total development costs and shall be structured as a ten (10) year deferred, forgivable loan with a subordinate lien; and

(2) a first lien conventional mortgage not provided by the Department must meet the mortgage financing requirements ~~applicable to §23.41 of this chapter (relating to Homebuyer Assistance (HBA) Program Requirements)~~ outlined in Chapter 20 of this Title. If the Department is providing the first lien mortgage with HOME financing, the loan will be fully amortizing with a thirty (30) year term. The Department will

require a debt to income ratio (back-end ratio) not to exceed 45 percent. The total estimated housing payment (including principal, interest, property taxes, and insurance) shall be no less than 20 percent and no greater than 30 percent of the Household's gross monthly income. Should the estimated housing payment be less than 20 percent of the Household's gross income, the Department shall reduce the amount of downpayment assistance and/or charge an interest rate to the homebuyer such that the total estimated housing payment is no less than 20 percent of the homebuyer's gross income. In no instance shall the interest rate charged to the homebuyer exceed 5 percent. ~~The Department shall use to the Household's income certification to make this determination.~~

(m) Earnest money is limited to no more than \$1,000, which may be credited to the homebuyer at closing, but may not be reimbursed as cash. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.

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

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

(p) To ensure affordability, the Department will impose resale or recapture provisions established in this ~~chapter~~Chapter.

§23.72 Single Family Development (SFD) Administrative Requirements

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (11) of this subsection:

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

(2) a budget that includes the amount of ~~Project~~Activity funds specifying the acquisition cost, construction costs, contractor fees, and developer fees, as applicable. A maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that ~~Project~~Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) project cost estimates, construction contracts, and other construction documents necessary, in the Department's sole determination, to ensure applicable property standard requirements will be met at completion;

(7) identification of Lead-Based Paint (LBP);

(8) executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(9) if applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(10) appraisal, which includes post ~~rehabilitation~~Rehabilitation or ~~reconstruction~~Reconstruction improvements for ~~Projects~~Activities involving construction; and

(11) any other documentation necessary to evidence that the ~~Project~~Activity meets the Program Rules.

(b) Loan closing. The Administrator or Developer must submit the documents described in paragraphs (1) - (2) of this subsection, with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

(1) a title commitment to issue a title policy ~~not older than thirty (30) days when submitted for a Commitment of Funds~~ that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. ~~The effective date of the title commitment must be no more than 30 days prior to the date of project submission.~~ Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and

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

(c) Disbursement of funds. The Administrator must comply with the requirements described in paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (10) of this subsection may be required with a request for disbursement:

(1) for construction costs, ~~a down date~~an interim construction binder advance endorsement ~~to the title policy~~ not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage ~~the~~a down date endorsement ~~must be to the mortgagee policy issued to the homebuyer~~ dated at least forty (40) days after the ~~date of construction completion~~Construction Completion Date;

(2) if required or applicable, ~~up to a maximum of~~ 50 percent of Direct ~~Project~~Activity Costs for a ~~Project~~Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of ~~Project~~Activity funds disbursed;

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

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

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

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

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

(8) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after ~~completion of construction~~ the Construction Completion Date;

(9) for final disbursement requests, submission of documentation required for ~~Project~~Activity completion reports; and

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

~~(Version as in effect on 08/08/2016.)~~