Minor Amendment to the
2018 State of Texas Consolidated Plan: One-Year Action Plan

TDHCA has prepared a minor amendment of the 2018 State of Texas Consolidated Plan: One-Year Action Plan (Plan) in accordance with the State's citizen participation plan and the requirements of 24 CFR §§91.505 and 91.320(k)(2)(iv). Since TDHCA will not develop new activities or change the method of distribution detailed in the Plan, the State of Texas is not required to substantially amend the Plan. Instead, TDHCA will summit the following minor amendment of the Plan to HUD in writing and through HUD's Integrated Disbursement and Information System (IDIS). The minor amendment of the Plan will also be posted to the TDHCA webpage at http://www.tdhca.state.tx.us/housing-center/pubs-plans.htm.

Section AP-90 (Program Specific Requirements for HOME) from the final 2018 OYAP has been amended as blacklined in this document. The purpose of this minor amendment is to add detail to the Plan that will allow TDHCA (with a Development specific waiver in accordance with the rules, Plan, and NOFA, and approved by the TDHCA Board) to award PY 2018 HOME funds to multifamily developments that are proposing refinancing with lower rehabilitation costs than would otherwise be allowed in 10 TAC Chapter 11 (10 TAC §11.101(b)(3)) as a result of the Preservation set-aside, which specifically allows for refinancing of existing non-federal debt with minimal rehabilitation, being included in the 2019-1 Multifamily Direct Loan Annual NOFA.

AP-90 Program Specific Requirements – 91.320(k)(1,2,3)

HOME Investment Partnership Program (HOME)
Reference 24 CFR 91.320(k)(2)

1. A description of other forms of investment being used beyond those identified in Section 92.205 is as follows:
   The State is not proposing to use any form of investment in its HOME Program that is not already listed as eligible for investment in 24 CFR §92.205(b).

2. A description of the guidelines that will be used for resale or recapture of HOME funds when used for homebuyer activities as required in §92.254, is as follows:
   A description of the guidelines that will be used for resale or recapture of HOME funds when used for homebuyer activities as required in §92.254, is as follows:
   If the participating jurisdiction intends to use HOME funds for homebuyers, the guidelines for resale or recapture must be described as required in 24 CFR §92.254(a)(5). Recapture provisions are not applicable for HOME-assisted multifamily rental projects; in the case of default, sale, short sale, and/or foreclosure, the entire HOME investment must be repaid.
   TDHCA has elected to utilize the recapture provision under 24 CFR §92.254(a)(5)(ii) as its primary method of recapturing HOME funds under any program the State administers that is subject to this provision. The following methods of recapture would be acceptable to TDHCA and will be identified in the note prior to closing.
   A. Recapture the amount of the HOME investment reduced on a pro rata share based on the time the

homeowner has owned and occupied the unit measured against the required affordability period. Number of years remaining in the Period of affordability X Total direct HOME subsidy = Recaptured Amount

Period of affordability

B. The recapture amount is subject to available net proceeds in the event of sale or foreclosure of the housing unit. In the event of sale or foreclosure of the housing unit, if the net proceeds (i.e., the sales price minus closing costs; any other necessary transaction costs; and loan repayment, other than HOME funds) are less than the HOME investment that is subject to recapture, then the Department will recapture the available amount of net proceeds. If there are no Net Proceeds from the sale, no repayment will be required of the homebuyer and the balance of the loan shall be forgiven. TDHCA will not recapture more than the amount available through net proceeds.

C. The household can sell the unit to any willing buyer at any price.

D. In the event that the assisted property is rented or leased, or otherwise ceases to be the principal residence of the initial household, the entire HOME investment is subject to recapture.

E. In the event of sale to a subsequent low-income purchaser of a HOME-assisted homeownership unit, the 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 §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.

3. A description of the guidelines for resale or recapture that ensures the affordability of units acquired with HOME funds? See 24 CFR §92.254(a)(4) are as follows:

   In certain limited instances, TDHCA may choose to utilize the resale provision at 24 CFR §92.254(a)(5)(i) under any activity the State administers that is otherwise subject to this provision. The following method of resale would be acceptable to TDHCA and will be identified in the note prior to closing:

   A. Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, or if the initial Household is no longer occupying the property as their Principal Residence.

   B. Resale requirements must ensure that, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, the housing is made available for subsequent purchase at an affordable price to a reasonable range of low- or very low-income homebuyers that will use the property 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.

   C. The resale requirement must ensure that the price at resale provides the original HOME-assisted owner a fair return on investment. Fair return on investment is 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. 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 fair return shall remain in force.

D. The initial homebuyer's investment of down payment and closing costs divided by TDHCA's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer. The balance of appreciated value shall be paid to TDHCA. If appreciated value is zero, or less than zero, then no appreciated value exists. The HOME loan balance will be transferred to the subsequent buyer and the affordability period will remain in effect. The period of affordability is based on the total amount of HOME funds invested in the housing.

E. 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. In the event that a federal affordability period is required and the assisted property is sold 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. Plans for using HOME funds to refinance existing debt secured by multifamily housing that is rehabilitated with HOME funds along with a description of the refinancing guidelines required that will be used under 24 CFR §92.206(b), are as follows:

TDHCA may use HOME funds to refinance existing debt secured by multifamily housing that is being rehabilitated with HOME funds as described in 24 CFR §92.206(b)(2). TDHCA shall use its underwriting and evaluation standards, site and development requirements, and application and submission requirements found in 10 TAC, Chapter ~~10~~11, for refinanced properties in accordance with its administrative rules. TDHCA may allow for lower per-unit rehabilitation costs than those required in 10 TAC §11.101(b)(3), potentially allowing rehabilitation costs as low as $1,000 per unit provided (1) those minimal rehabilitation costs can be supported in a Property Condition Assessment and/or Capital Needs Assessment, (2) the request is in accordance with this plan, TDHCA's rules, and the applicable NOFA, and (3) TDHCA's Board agrees to waive the minimum rehabilitation costs in 10 TAC §11.101(b)(3). At a minimum, ~~these rules~~this requires the following:

• that rehabilitation is the primary eligible activity for developments involving refinancing of existing debt by requiring that the HOME eligible rehabilitation costs – whether funded entirely or partially by TDHCA's HOME funds – are greater than the refinancing costs (i.e. payoff amount plus closing and title costs);

• that a minimum funding level – minimal rehabilitation costs as described above, or the applicable per unit costs in 10 TAC §11.101(b)(3) – is set for rehabilitation on a per unit basis;

• that a review of management practices is required to demonstrate that disinvestments in the property has not occurred;

• that long-term needs of the project can be met;

• that the financial feasibility of the development will be maintained over an extended affordability period;

• that whether new investment is being made to maintain current affordable units and/or creates additional affordable units is stated;

• that the required period of affordability is specified;

• that the HOME funds may be used throughout the entire jurisdiction (except as TDHCA may be limited by the Texas Government Code) is specified; and

• that HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG~~, is stated~~.

Discussion:

For HOME, the State is not proposing to use any form of investment in its HOME Program that is not already listed as an eligible for investment in 24 CFR §92.205(b). As described above, TDHCA may use HOME funds to refinance existing debt secured by multifamily housing that is being rehabilitated as described in 24 CFR §92.206(b). TDHCA shall use its underwriting and evaluation standards, site and development requirements, and application and submission requirements found in 10 Texas Administrative Code, Chapters 10, 11, and 13, for refinanced properties in accordance with its administrative rules.