

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

TDHCA Governing Board Approved Rule Action for

10 TAC Chapter 1, §1.21, Action by Department if Outstanding Balances Exist

Disclaimer

Attached is a rule action relating to 10 TAC Chapter 1, §1.21, Action by Department if Outstanding Balances Exist, that was approved by the TDHCA Governing Board on May 9, 2024.

This rule will be released for public comment and returned to the Board for final adoption.

This document, including its preamble, is expected to be published in the May 24, 2024, edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment and can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

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

The purpose of this rule is to inform persons or entities requesting awards of new funds or resources, Form(s) 8609, application amendments, LURA amendments, new Contracts (with the exception of a Household Commitment Contract), Contract amendments, or loan modifications that, with the exceptions noted by this rule, if fees or loan payments (principal or interest) are past due, or Disallowed Costs have not been repaid, to the Department, the request may be denied, delayed, or the Subrecipient/Administrator/Developer/Owner's Contract(s) terminated.

The rule has been identified by staff as needing several minor revisions. Changes relate primarily to removing reference to the Executive Award and Review Advisory Committee (EARAC) which no longer exists; and clarification that this rule does not apply to specific multifamily processes nor to vendors still under contract.

Public Comment

Public Comment Period: Start: 8:00 a.m. Austin local time on May 24, 2024

End: 5:00 p.m. Austin local time on June 24, 2024

Comments received after 5:00 p.m. Austin local time on June 24, 2024, will not be accepted.

Written comments may be submitted, within the designated public comment period to:

brooke.boston@tdhca.state.tx.us

Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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

Mailing Address: PO Box 13941, Austin, TX 78711-3941

Main Number: 512-475-3800 Toll Free: 1-800-525-0657

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DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS

Acción de regla aprobada por la Junta Directiva del TDHCA para la sección (§) 1.21 [“Acción por parte del Departamento en caso de existencia de saldos pendientes”] del capítulo 1 del título 10 del Código Administrativo de Texas (TAC)

Descargo de responsabilidad

Se adjunta una acción de regla relacionada con la sección (§) 1.21 [“Acción por parte del Departamento en caso de existencia de saldos pendientes”] del capítulo 1 del título 10 del Código Administrativo de Texas (TAC), que fue aprobada por la Junta Directiva del TDHCA el día 9 de mayo de 2024.

Esta regla se publicará para someterse a comentarios del público y se devolverá a la Junta para su adopción final.

Se espera que este documento, incluyendo su preámbulo, se publique en la edición del *Texas Register* del 24 de mayo de 2024. Esa versión publicada constituirá la versión oficial para fines de comentarios del público y se puede encontrar en el siguiente enlace: <https://www.sos.texas.gov/texreg/index.shtml>.

De conformidad con la sección (§) 2001.023 del Código de Gobierno de Texas, a continuación, se presenta un resumen de la regla y de la acción:

La finalidad de esta regla es informar a las personas o entidades que solicitan adjudicaciones de nuevos fondos o recursos, formulario(s) 8609, modificaciones de solicitudes, modificaciones de acuerdos de restricciones de planificación urbana (LURA), nuevos contratos (con excepción de un contrato de compromiso para grupos familiares), modificaciones de contratos o modificaciones de préstamos que, con las excepciones señaladas por esta regla, si las tarifas o los pagos de préstamos (capital o intereses) están vencidos, o los costos no permitidos no han sido reembolsados al Departamento, se puede negar o retrasar la solicitud, o bien se puede(n) rescindir el (los) contrato(s) del beneficiario secundario, administrador, urbanizador y/o propietario.

El personal ha identificado que la regla necesita varias modificaciones menores. Los cambios se relacionan principalmente con la eliminación de la referencia al Comité Consultivo Ejecutivo de Revisiones y Adjudicaciones (EARAC), que ya no existe, y una aclaración de que esta regla no se aplica a procesos multifamiliares específicos ni a proveedores aún bajo contrato.

Comentarios del público**Periodo de comentarios del público:**

Inicio: 8:00 a. m., hora local de Austin, del 24 de mayo de 2024

Finalización: 5:00 p. m., hora local de Austin, del 24 de junio de 2024

No se aceptarán los comentarios que se reciban después de las 5:00 p. m., hora local de Austin, del 24 de junio de 2024.

Los comentarios por escrito pueden enviarse dentro del período designado de comentarios del público a **brooke.boston@tdhca.state.tx.us**.

Se anima a quienes formulen comentarios públicos a que hagan referencia al borrador de la regla, política o plan específico relacionado con su comentario, así como una referencia o cita específica asociada a cada comentario.

Tenga en cuenta que todos los comentarios enviados al TDHCA se considerarán información pública.

DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS

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

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

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Attachment 1: Preamble, including required analysis, for proposed repeal of §1.21, Action by Department if Outstanding Balances Exist

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §1.21, Action by Department if Outstanding Balances Exist. The purpose of the proposed repeal is to update it for consistency with other Department award review policies and to clarify its applicability in certain cases.

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

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

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

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

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: how to handle instances where an outstanding balance is owed to the Department.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand, limit, or repeal an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect the state's economy.

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

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

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

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

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

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 24, 2024 to June 24, 2024, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, June 24, 2024.

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

§1.21, Action by Department if Outstanding Balances Exist

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

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §1.21, Action by Department if Outstanding Balances Exist. The purpose of the new section is to bring this rule into consistency with other more recent revisions to Department processes including removal of the prior process for the Executive Award Review and Advisory Committee (EARAC) and clarification that this rule does not apply to specific multifamily processes nor to vendors.

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

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

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

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

1. The new section does not create or eliminate a government program but relates to changes to an existing activity, the handling of outstanding balances owed to the Department.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new section does not require additional future legislative appropriations.
4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new section is not creating a new regulation, except that it is replacing a section being repealed simultaneously to provide for revisions.
6. The new section will not expand, limit, or repeal an existing regulation.
7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new section will not negatively or positively affect the state's economy.

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

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

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

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

The Department has evaluated the new section as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no

economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 24, 2024 to June 24, 2024, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, June 24, 2024.

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

§1.21, Action by Department if Outstanding Balances Exist

(a) Purpose. The purpose of this section is to inform Persons or entities requesting awards of new funds or resources, Form(s) 8609, application amendments, LURA amendments, new Contracts (with the exception of a Household Commitment Contract), Contract amendments, or loan modifications that, with the exceptions noted by this rule, if fees or loan payments (principal or interest) are past due, or Disallowed Costs have not been repaid, to the Department, the request may be denied, delayed, or the Subrecipient/Administrator/Developer/Owner's Contract(s) terminated. This rule does not apply to active contracts with vendors that have been procured by the Department.

(b) Definitions.

(1) Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Part that govern the program associated with the request, or assigned by federal or state law.

(2) Disallowed Costs: Expenses claimed by a Subrecipient/Administrator/Developer/Owner, paid by the Department, and subsequently determined by the Department to be ineligible and subject to repayment.

(c) Except in the case of interim construction loans, if Disallowed Costs, fees, or loan payments are past due on the subject property requesting the action the Department will not: issue Form(s) 8609; amend applications or LURAs; or modify loan documents.

(d) Except in the case of Contracts for CSBG non-discretionary funds, the Department will not make awards of new funds or resources, enter into new Contracts, or amend Contracts when Disallowed Costs, fees, or loan payments remain unpaid, or approve an entity's Ownership transfer into an existing property unless the entity or Affiliate (as applicable) has entered into, and is complying with, an agreed-upon repayment plan that is approved by the Department's Executive Director or Enforcement Committee.

(e) Once the Department notifies a Person or entity that they are responsible for the payment of Disallowed Costs, required fee or payment that is past due, if no corrective action is taken within seven days of notification, the Executive Director may deny the requested action for failure to comply with this rule.

(f) Exception for a Work Out Development. If fees (not including application or amendment fees) or payments affiliated with a work out Development are past due, then the past due amounts affiliated with a work out Development may be excepted from this rule, so long as the work out is actively underway by Department staff. In which case, in the Department's sole discretion, LURA or any other kinds of amendments may be considered for the subject Development or Contract.

(g) In accordance with Subchapter C of this Chapter (relating to Previous Participation Reviews of Department Awards), if a Person or entity applies for funding or an award from the Department, any fees, Disallowed Costs, or payment of principal or interest to the Department that is past due beyond any grace period provided for in the applicable loan documents and any past due fees (not just those related to the subject of the request) will be reported to the Executive Director for review. ~~EARAC.~~