Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 171. REPORTING REQUIREMENTS

1 TAC §171.9, §171.11

The Texas Judicial Council (Council) proposes amendments to 1 Texas Administrative Code §171.9, to comply with HB 1182's amendments to Texas Government Code § 71.035, concerning judicial statistics, enacted during the 88th Regular Session of the Texas Legislature (2023). The Council also proposes new rule §171.11 regarding the new performance measures reporting requirements for the Office of Court Administration (OCA), which is responsive to the amendments made to Texas Government Code § 72.083 by HB 2384. The instructions for complying with the new reporting requirements developed by OCA can be found on OCA's website at https://txcourts.gov/reporting-to-oca/district-county-court-level-reporting/.

Although the Council expects to adopt the rules by February of 2024, clerks will not be required to report the data required by the proposed rules until March 1, 2024, which will allow time to implement any required changes to their case management systems.

Background and Justification

HB 1182 requires that the Council gather monthly court activity statistics and case-level information on the amount and character of business transacted by each trial court in the state. For trial courts with counties with a population of at least one million, the Council must gather information including, but not limited to: (1) the number of cases assigned to the court; (2) the case clearance rate for the court; (3) the number of cases disposed of by the court; (4) the number of jury panels empaneled by the court; (5) the number of orders of continuance for an attorney before the court or by the court; (6) the number of pleas accepted by the court; (7) the number of cases tried by the judge of the court or before a jury; and (8) the number of cases tried before a visiting or associate judge of the court. The trial courts must provide the information in the form and manner prescribed by OCA, and OCA must publish the information for each court on OCA's website in a searchable format. For counties in excess of a population of one million, the court official for each court in the county must submit, to the appropriate county official, a copy of each required monthly report for publication on the county's public Internet website within a certain prescribed timeframe and in searchable format. HB 2384 requires that OCA annually report, as performance measures, the following information with respect to each district court, statutory county court, statutory probate court, and county court in Texas: (1) the court's clearance rate; (2) the average time a case is before the court from filing to disposition; and (3) the age of the court's active pending caseload.

Fiscal Impact on State and Local Government

Jennifer Henry, Chief Financial Officer of OCA, has determined that for each year of the first five-year period the new rules are in effect, there will be no fiscal implications for the state as a result of enforcing or administering the rules as proposed. There may be a cost to local governments to provide the data required by HB 1182 and HB 2384 due to modification of court case management systems or office processing changes needed to provide data by court; however, the fiscal impact cannot be determined because it will vary depending on a county's staff level and the capability of existing technology to process and report the additional data.

Local Employment Impact Statement

Jennifer Henry has determined that the proposed rules will not affect the local economy, so the Council is not required to prepare a local employment impact statement under Texas Government Code § 2001.022.

Public Benefit/Cost Note

Alejandra Pena, Director of Data and Research with OCA, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be: (1) clarity in what is required by law for reporting case activity; and (2) information that more accurately reflects the workloads of each district court, statutory county court, statutory probate court, and county court in Texas that is more useful to state and local officials and other interested parties for judicial administration, policy making, and fiscal planning.

Probable Economic Costs to Persons Required to Comply with Proposal

Jennifer Henry has determined that for each year of the first five-year period the proposed rules are in effect, there may be an indeterminate fiscal impact to counties to comply with the new statutory requirements.

Fiscal Impact on Small Businesses, Micro Businesses, and Rural Communities

There will be no adverse effect on small businesses, micro businesses, or rural communities as a result of the proposed rules. Since the Council has determined that there is no adverse effect, the preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code § 2006.002, is not required.

One-for-one Requirement for Rules with Fiscal Impact

While the proposed rules may fiscally impact local governments, the impact is indeterminate and may vary from county to county.

The proposed rules do not impose a cost on another state agency or special district.

Government Growth Impact Statement

Per Texas Government Code § 2001.0221, the Council provides the following government growth impact statement. For each year of the first give years the proposed rules are in effect, the Council has determined that:

The proposed rules do not create or eliminate a government program.

Implementation of the proposed rules do require the creation of new employee positions for OCA.

Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to OCA.

The proposed rules do not require an increase or decrease in fees paid to the OCA.

The proposed rules do create a new regulation by requiring Texas courts to submit additional reporting data to OCA.

The proposed rules do expand an existing regulation by requiring Texas courts to submit additional reporting data to OCA.

The proposed rules do not increase the number of individuals subject to the rules' applicability because the Council does not regulate individuals.

The proposed rules do not positively or adversely affect the state's economy.

Takings Impact Assessment

The Council has determined that no private real property interests are affected by the proposed rules, and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a takings impact assessment under Texas Government Code § 2001.043.

Environmental Rule Analysis

The Council has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Council asserts the proposed rules are not a "major environmental rule," as defined by Texas Government Code § 2001.0225 and do not require the preparation of an environmental impact analysis.

Public Comment

Comments on the proposed rules and reporting instructions may be submitted to Alejandra Pena, Director of Data and Research, with OCA, at P.O. Box 12066, Austin, Texas 78711-2066 or electronically to Data.division@txcourts.gov.

Statutory Authority and Sections Affected

The proposed rules are proposed pursuant to: (1) Texas Government Code § 71.019, the Council's general rulemaking authority; (2) section 71.031 of the Government Code, the Council's authority to study the procedures and practices, work accomplished, and results of state courts and methods for their improvement; (3) the Council's authority under Texas Government Code § 71.033 to design methods for simplifying judicial procedure, expediting the transaction of judicial business, and correcting faults in or improving the administration of justice; and (4) Texas Government Code § 71.035, the Council's authority to gather judicial statistics. The proposed rules implement the changes to Texas Government Code § 71.035 by HB 1182 and to Texas Government Code § 72.083 by HB 2384.

§171.9. Other Reports Required from the Courts.

(a) Judicial Appointments and Fees. The clerk of each court shall submit a monthly report to OCA in the format prescribed by OCA. The report must:

(1) pursuant to Section 36.004 of the Government Code, list every appointment made for an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator and the compensation paid, if any. Appointments made by the court for positions exempted from reporting under Sec. 36.003, Tex. Gov't Code, are not required to be reported.

(2) The report shall include the case number and style, and the name of the judge and date of order approving compensation. The report is due no later than 15 days following the end of the month reported. If no appointments were made or fees were approved by the courts in the preceding month, the clerk shall file a report indicating that no appointments or payments were made in that month.

(b) Jury Charges and Sentences in Capital Cases. Pursuant to Section 72.087 of the Government Code, the judge or clerk of a court in which a capital case is heard must submit to OCA a written record of the case that includes the content of the trial court's charge to the jury and the sentence issued in the case. The information must be submitted no later than 30 days after the date of judgment of conviction or acquittal.

(c) Vexatious Litigants. Pursuant to Section 11.104 of the Civil Practice and Remedies Code, the clerk of each court shall submit to OCA within 30 days a copy of any order declaring a person a vexatious litigant and prohibiting the person from filing new litigation without the consent of the local administrative judge.

(d) Judicial Bypass. Pursuant to Section 33.003(l-1) of the Family Code, the district clerk or county clerk shall submit a report to OCA on a form prescribed by OCA the information required under Sec. 33.003(1-l) regarding a case in which a minor files an application for a court order authorizing the minor to consent to the performance of an abortion without notification and consent of a parent, managing conservator, or guardian.

(e) Court Security Incident. Pursuant to Article 102.017 of the Code of Criminal Procedure, the sheriff, constable or other law enforcement agency that provides security for a court is required to submit a report to OCA regarding any incident involving court security that occurs in or around a building housing a court for which the sheriff, constable, agency or entity provides security. The report is due no later than three business days after the date the incident occurred.

(f) Private Professional Guardians. Pursuant to Section 1104.306 of the Estates Code, the clerk of each county shall annually submit to the Judicial Branch Certification Commission the name and business address of each private professional guardian who has satisfied the registration requirements of Sec. 1104.303, Tex. Estates Code. The report is due no later than January 31 of each year.

(g) Writ of Attachment. Pursuant to Art. 2.212 of the Code of Criminal Procedure, not later than the 30th day after the court issues a writ of attachment, the clerk of a district, statutory county or county court shall report to OCA on a form prescribed by OCA the following regarding the issued writ of attachment:

(1) the date the attachment was issued;

(2) whether the attachment was issued in connection with a grand jury investigation, criminal trial, or other criminal proceeding;

(3) the names of the persons requesting and the judge issuing the attachment; and

(4) the statutory authority under which the attachment was issued.

(h) Regional Presiding Judges Report. Pursuant to Government Code Sec. 71.038, the presiding judges of the administrative judicial regions shall submit on a form approved by the Council information requested by the Council regarding the business transacted by the judges.

(i) Additional Reporting for Counties with a Population of 1 Million or More. Pursuant to Sec. 71.035 of the Government Code, for the reporting period beginning March 1, 2024, in addition to the other monthly reporting required under this chapter, the district and county clerks in counties with a population of 1 million or more as determined by the decennial census shall report to the OCA, in the form and manner prescribed by OCA, for each of the district and county courts the clerks support, the following:

(1) the number of cases assigned;

(2) the case clearance rate;

(3) the number of cases disposed;

(4) the number of jury panels empaneled;

(5) the number of orders of continuance for an attorney before the court or by the court;

(6) the number of pleas accepted;

(7) the number of cases tried by the judge of the court or before a jury; and

(8) the number of cases tried before a visiting or associate judge of the court.

§171.11. Annual Performance Measure Reporting.

(a) Pursuant to Sec. 72.083(b) of the Government Code, the district clerk and county clerk of each county who maintains the records for the district courts and county courts shall annually submit to OCA in the manner required by OCA the following activity for each district court, statutory county court, statutory probate court, and constitutional county court in the county:

(1) the court's clearance rate defined as the number of cases disposed of by a court divided by the number of cases added to the docket of the court;

(2) the average time a case is before the court from filing to disposition; and

(3) the age of the court's active pending caseload.

(b) The reporting time period for the first annual report due to OCA under this section must, at a minimum, include the information collected from March 1, 2024 through August 31, 2024.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 10, 2023.

TRD-202304192

Maria Elena Ramon
General Counsel
Texas Judicial Council
Earliest possible date of adoption: December 24, 2023
For further information, please call: (512) 936-7553

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER I. REPORTING

1 TAC §355.7201

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.7201, concerning Novel Coronavirus (COVID-19) Fund Reporting.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with the 2024-25 General Appropriations Act, House Bill (H.B.) 1, 88th Legislature, Regular Session, 2023 (Article II, HHSC, Rider 150), which requires that HHSC develop a report detailing the total value and uses of COVID-19-related Federal Funds, including Provider Relief Funds, provided directly to nursing facilities and hospitals contracting with HHSC since the beginning of the public health emergency.

The COVID-19 related Federal Funds include funds received under the Coronavirus Aid, Relief, and Economic Security Act, 15 U.S.C. §9001 et seq. (CARES Act); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (CAA 2021); and the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (ARPA).

This section was originally adopted to comply with the 2022-23 General Appropriations Act, Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC, Rider 143) and S.B. 809, 87th Legislature, Regular Session, 2021. The proposed amendment updates language to reflect the new requirements of Rider 150, and deletes language that reflects no-longer-applicable requirements of Rider 143 and S.B. 809. In accordance with Rider 150, the proposed amendment revises the frequency of reporting from monthly to semi-annually, and repeals the reporting requirement for health care institutions other than hospitals and nursing facilities. HHSC must also submit a report to the Office of the Governor, Legislative Budget Board, and any appropriate standing committee of the Legislature on December 1st and June 1st of each fiscal year. Appropriations in Strategy A.2.4, Nursing Facility Payments, for fiscal year 2025 are contingent on the submission of the reports due June 1, 2024. The required reporting for both the providers and HHSC is anticipated to terminate by August 31, 2025.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.7201(a) updates the requirement to collect and compile legislatively-required reports to be on a semi-annual basis rather than on a a monthly basis, and specifies that reports are collected from hospitals and nursing facilities.

The proposed amendment to §355.7201(b) adds new terms "authorized representative," "hospital," and "nursing facility." The proposed amendment deletes the term "health care insti-

tution" because nursing facilities and hospitals will be explicitly enumerated in this section as applicable. The paragraphs are renumbered to account for deletion and addition of definitions and punctuation edits are made for clarity.

The proposed amendment deletes current §355.7201(c). Nursing facilities and hospitals are the two remaining provider types that will still be subject to the reporting requirement, and this is reflected throughout this section.

The proposed amendment to current §355.7201(d) renumbers the subsection to subsection (c) and specifies that the reporting requirement applies to hospitals and nursing facilities only.

The proposed amendment to §355.7201 adds new subsection (d) which describes the option to designate an authorized representative for reporting purposes and the process for documenting the designation with HHSC.

The proposed amendment to §355.7201 adds new subsection (e) which provides options for reporting in a consolidated or individual manner for institutions depending on whether the facility did or did not receive funding during the reporting period.

The proposed amendment to current §355.7201(e) renumbers the subsection to subsection (f) and updates the frequency of reporting for health care institutions and the dates reports will be due to HHSC for semi-annual reporting.

The proposed amendment to current §355.7201(f) renumbers the subsection to subsection (g) and updates when HHSC will submit HHSC's legislatively-mandated reports based on the compiled reports submitted by the required institutions.

The proposed amendment to current §355.7201(g) renumbers the subsection to subsection (h) and updates the potential penalties for providers who fail to submit the required reports. The reference to the legislative mandate is updated and examples of other unique identifying numbers are added to paragraph (1). Paragraphs (2), (3) and paragraph (5) are deleted because the penalties described in these paragraphs no longer apply; current paragraph (4) is renumbered to paragraph (2). The subsection is updated to be consistent with other changes in this section.

The proposed amendment to current §355.7201(h) renumbers the subsection to subsection (i) and updates the date when the reporting requirement ends to August 31, 2025, or as specified by HHSC.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will not expand, limit, or repeal existing rules;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that the proposal would not have an adverse economic effect on small businesses, micro-businesses, and rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public benefit will be a continued understanding of the type and amount of COVID-19 federal funds that have flowed to hospitals and nursing facilities, and reduced administrative burden for HHSC and providers due to the updated frequency of reporting from monthly to twice annually.

Trey Wood has also determined that for the first five years the rule is in effect, there would be no anticipated economic costs to persons who are required to comply with the proposed rule. The proposed amendment will require hospitals and nursing facilities to report semi-annually on federal COVID-19 funds received. The Public Health Emergency (PHE) ended in May 2023 so there will be minimal work to complete this reporting and HHSC anticipates there will be minimal funds received (if any) that will be reported.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to hhsc_rad_survey@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please

indicate "Comments on Proposed Rule 23R079" in the subject line.

STATUTORY AUTHORITY

The proposed amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; 2024-25 General Appropriations Act, H.B. 1, 88th Legislature, Regular Session, 2023 (Article II, HHSC, Rider 150), which requires HHSC to establish procedures for hospitals and nursing facilities to report required information.

The proposed amendment affects Texas Government Code Chapter 531; Texas Human Resources Code Chapter 32; and 2024-25 General Appropriations Act, H.B. 1, 88th Legislature, Regular Session, 2023 (Article II, HHSC, Rider 150).

§355.7201. Novel Coronavirus (COVID-19) Fund Reporting.

(a) Introduction. The Texas Health and Human Services Commission (HHSC) collects semi-annual [~~monthly~~] reports from hospitals and nursing facilities [~~health care institutions~~] to compile legislatively-mandated reports. This section outlines the reporting requirements related to novel coronavirus (COVID-19) federal fund reporting. This section also describes the circumstances in which penalties and recoupments will be necessary for certain provider types for failure to submit required semi-annual [~~monthly~~] reports.

(b) Definitions. Unless the context clearly indicates otherwise, the following words and terms, when used in this section, are defined as follows.

(1) Authorized representative--An organization or person authorized to report on behalf of a hospital or nursing facility.

[~~(1) Health care institution--As defined by Civil Practice and Remedies Code §74.001.~~]

(2) HHSC--The Texas Health and Human Services Commission, or its designee.

(3) Hospital--A licensed public or private institution as defined in Chapter 241 of the Texas Health and Safety Code or licensed under Chapter 577 of the Texas Health and Safety Code.

(4) Nursing facility--A licensed public or private institution to which Chapter 242, Texas Health and Safety Code, applies.

[~~(c) Institutions required to complete monthly reports. Health care institutions that are required to submit monthly reports include:~~]

[~~(1) an ambulatory surgical center;~~]

[~~(2) an assisted living facility licensed under Texas Health and Safety Code Chapter 247;~~]

[~~(3) an emergency medical services provider;~~]

[~~(4) a health services district created under Texas Health and Safety Code Chapter 287;~~]

[~~(5) a home and community support services agency;~~]

[~~(6) a hospice;~~]

[~~(7) a hospital;~~]

[~~(8) a hospital system;~~]

[~~(9) an intermediate care facility for the mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with the Social Security Act §1915(c) (42 U.S.C. §1396n), as amended;~~]

[~~(10) a nursing home; and~~]

[~~(11) an end-stage renal disease facility licensed under Texas Health and Safety Code §251.011.~~]

(c) [~~(d)~~] Reporting requirements. Hospitals and nursing facilities are [~~A health care institution is~~] required to report COVID-19 related Federal Funds [~~on moneys~~] received, including funds under the Coronavirus Aid, Relief, and Economic Security Act (15 U.S.C. §9001 et seq.), the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260), and the American Rescue Plan Act of 2021 (Pub. L. No. 117-2). HHSC may also request additional information related to direct or indirect costs associated with COVID that have impacted the provider's business operation and any other information HHSC deems necessary to appropriately contextualize the moneys received as described in this subsection. HHSC will collect information [~~and the requested data may vary by provider type~~] based on legislative direction.

(d) Designation of authorized representative. A hospital or nursing facility may designate an authorized representative to report on behalf of that hospital or nursing facility. A document, which may take the format of a consolidated list such as a spreadsheet, must be submitted to HHSC and must:

(1) identify that the institution has designated the authorized representative;

(2) identify all institutions that have designated the authorized representative to serve in that capacity; and

(3) contain the name of the representative of the institution that designated the authorized representative.

(e) Report submission and consolidation options. An authorized representative for a hospital or nursing facility may submit the required reports to HHSC in the following manner.

(1) For institutions that received no COVID-19 related Federal Funds during the reporting period, the authorized representative must submit a consolidated report for all institutions reflecting $0 received; or

(2) For institutions that received COVID-19 related Federal Funds during the reporting period, the authorized representative must submit an individual report for each institution that received funding.

(f) [~~(e)~~] Frequency of reporting.

(1) Submission of data will be required on a semi-annual [~~monthly~~] basis.

(2) The first semi-annual report [~~Initial reporting will begin on September 1, 2021, and~~] is due by March 1, 2024, and [~~October 1, 2021. The initial reporting period~~] will be for the period of September 1, 2023, through January 31, 2024. [~~January 31, 2020, through August 31, 2021. HHSC may choose to grant the provider an extension of up to 15 calendar days if the provider notifies HHSC that additional time is required to submit the initial report prior to the due date.~~]

(3) Subsequent semi-annual [~~monthly~~] reports will be due on September 1, 2024, and March 1, 2025. [~~by the first day of each~~

month and will cover the time-period two months prior. For example, the report due November 1, 2021, will cover September 1, 2021 through September 30, 2021. HHSC may grant the provider an extension of no more than 15 calendar days if the provider notifies HHSC that more time is needed prior to the due date.]

(g) [(f)] HHSC legislatively-mandated reports. HHSC will compile reports based on submitted data and submit the reports on a semi-annual [quarterly] basis to the Governor, Legislative Budget Board, and any appropriate standing committee in the Legislature. Semi-annual [Quarterly] reports will be submitted June 1, 2024; December 1, 2024; and June 1, 2025. [beginning December 1, 2021, and continue March 1, June 1, and September 1 thereafter. Upon conclusion of the Public Health Emergency, the submission frequency may be reduced to semi-annually on December 1 and June 1 of each fiscal year.]

(h) [(g)] Penalties for failure to report. Specified providers are required to report information as requested on a semi-annual [monthly] basis to HHSC.

(1) A hospital[, hospital system,] or nursing facility that does not report the requested information will be identified by name, including a unique identifying number, such as a National Provider Identification number, Facility Identification Number, or License Number, in HHSC's legislatively-mandated reports.

[(2) Failure to report 2 or more times in a 12-month period will result in notification to the appropriate licensing authority who may take disciplinary action against a health care institution that violates this chapter as if the institution violated an applicable licensing law.]

[(3) Failure to report will result in the issuance of a vendor hold on future payments to the identified provider after 30 days following the due date of the required report. The vendor hold will be released after the health care institution has submitted all delinquent reports to HHSC.]

(2) [(4)] Appropriations in the 2024-25 General Appropriations Act, House Bill 1, 88th Legislature, Regular Session, 2023 (Article II, HHSC, Rider 150), Strategy A.2.4, Nursing Facility Payments, for fiscal year 2025 [2022-23 General Appropriations Act, Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC) Strategy A.2.4, Nursing Facility Payments, for fiscal year 2023] are contingent on the submission of the report [reports] due June 1, 2024 [December 1, 2021, and June 1, 2022]. If HHSC is unable to utilize appropriations for nursing facilities from Strategy A.2.4 as a result of insufficient reporting from nursing facilities, HHSC will suspend all payments to nursing facilities until such a time as HHSC is authorized to continue making expenditures under Strategy A.2.4.

[(5) HHSC will offer a grace period until November 30, 2021, for a provider to submit the required reports. While the deadlines to report will not change, during that period HHSC will not take an action described in paragraphs (2) or (3) of this subsection as long as the provider has submitted all reports required under this section no later than December 1, 2021. A provider's failure to submit a report during that period will not be considered in a subsequent reporting period as long as the provider has completed all reports required under this section no later than December 1, 2021.]

(i) [(h)] Duration. This reporting requirement ends on August 31, 2025, [August 31, 2023] or as specified by HHSC.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304129
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 24, 2023
For further information, please call: (512) 424-6637

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.7

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.7 Appeals Process.

The purpose of the proposed repeal is to replace the current rule with a new, clarified rule.

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

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

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

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

1. The repeal does not create or eliminate a government program but relates to changes to existing guidance for program subrecipients.

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 clarified 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 November 24, 2023, to December 26, 2023, to receive input on the proposed action. Written comments may be submitted by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, December 26, 2023.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repeal affects no other code, article, or statute.

§1.7. Appeals Process.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 11, 2023.

TRD-202304183
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 24, 2023
For further information, please call: (512) 475-3959

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10 TAC §1.7

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, Subchapter A General Policies and Procedures, §1.7 Appeals Process.

The purpose of the proposed rule is to make changes to provide greater clarity on the circumstances in which appeals may be filed.

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 new section would be in effect:

1. The new section does not create or eliminate a government program but relate to changes to existing regulations applicable to Department subrecipients.

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 they are replacing sections 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 proposed new section and determined that the proposed action 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 proposed 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 effect on local economies and has determined that for the first five years the proposed 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 sections would be an updated and clarified rule. There will not be economic costs to individuals required to comply with the new 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 new section is in effect, enforcing or administering the rule 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 November 24, 2023, to December 26, 2023, to receive input on the proposed action. Comments may be submitted by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, December 26, 2023.

STATUTORY AUTHORITY. The proposed new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new section affects no other code, article, or statute.

§1.7. Appeals Process.

(a) Purpose. The purpose of this rule is to provide the procedural steps by which an appeal can be filed relating to Department decisions as authorized by Tex. Gov't Code §2306.0321 and §2306.0504 which together require an appeals process be adopted by rule for the handling of appeals relating to Department decisions and debarment. Appeals relating to competitive low income housing tax credits, or when multifamily loans are contemporaneously layered with competitive low income housing tax credits, and the associated underwriting, are governed by a separate appeals process provided at §11.902 of this title (relating to Appeals Process) (§2306.0321; §2306.6715).

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. If not defined in this section, capitalized terms used in this section have the meaning in the rules that govern the applicable program under which the appeal is being filed.

(1) Affiliated Party--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(2) Appeal--An Appealing Party's notice to the Department to challenge a decision or decisions made by staff and/or the Executive Director regarding an Application, Commitment, Contract, Loan Agreement, Debarment, Underwriting Report, or LURA as governed by this section.

(3) Appeal File--The written record of an Appeal that contains the applicant's Appeal; the correspondence, if any, between Department staff (or the Executive Director) and the Appealing Party; and the final Appeal decision response provided to the Appealing Party.

(4) Appealing Party--The Administrator, Affiliated Party, Applicant, Person, or Responsible Party under Subchapter D, §2.102 of this title (relating to Enforcement Definitions) who files, intends to file, or has filed on their behalf, an Appeal before the Department.

(c) Persons Eligible to Appeal. An Appeal may be filed by any Administrator, Applicant, Person, or Responsible Party as provided for in Subchapter D, §2.102 of this title, or Affiliated Party of the Administrator, Applicant, Person or Responsible Party who has filed an Application for funds or reservation with the Department, or has received funds or a reservation from the Department to administer.

(d) Grounds to Appeal Staff Decision. Appeals may be filed using this process on the following grounds:

(1) Relating to applying for funds or requesting to be approved for reservation authority an Appealing Party may appeal if there is:

(A) Disagreement with the determination of staff regarding the sufficiency or appropriateness of documents submitted to satisfy evidence of a given threshold or scoring criteria, including the calculation of any scoring based items;

(B) Disagreement with the termination of an application;

(C) Disagreement with the denial of an award or reservation request;

(D) Disagreement with the amount of the award recommended by the Department, unless that amount is the amount requested by the Applicant;

(E) Disagreement with one or more conditions placed on the award or reservation; or

(F) Concern that the documents submitted were not processed by Department staff in accordance with the Application and program rules in effect.

(2) Relating to issues that arise after the award or reservation determination by the Board, an Appealing Party may appeal if there is disagreement with a denial by the Department of a Contract, payment, Commitment, Loan Agreement, or LURA amendment that was requested in writing.

(3) When grounds for appeal are not evidenced or stated in conformance with this Section, the Board or the Executive Director may determine in their discretion that there is good cause for an Appeal because due process interests are sufficiently implicated.

(4) Relating to debarment, a Responsible Party may appeal a determination of debarment, as further provided for in §2.401(k) of this title (relating to General).

(5) Affiliated Party Appeals. An Affiliated Party has the ability to appeal only those decisions that directly impact the Affiliated Party, not the underlying agreements. An Affiliated Party may appeal a finding of failure to adequately perform under an Administrator's Contract, resulting in a "Debarment" or a similar action, as further described Chapter 2, Subchapter D, Debarment from Participation in Programs Administered by the Department, of this title.

(e) Process for Filing an Appeal of Staff Decision to the Executive Director.

(1) An Appealing Party must file a written Appeal of a staff decision with the Executive Director not later than the seventh calendar day after notice has been provided to the Appealing Party. For purposes of this section, the date of notice will be considered the date of an Application-specific written communication from the Department to the Applicant; in cases in which no Application-specific written communication is provided, the date of notice will be the date that logs are

published on the Department's website when such logs are identified as such in the application including but not limited to a Request for Proposals or Notice of Funding Opportunity, or in the rules for the applicable program as a public notification mechanism.

(2) The written appeal must include specific information relating to the disposition of the Application or written request for change to the Contract, Commitment, Loan Agreement, and/or LURA. The Appealing Party must specifically identify the grounds for the Appeal based on the disposition of underlying documents.

(3) Upon receipt of an Appeal, Department staff shall prepare an Appeal File for the Executive Director. The Executive Director shall respond in writing to the Appealing Party not later than the fourteenth calendar day after the date of receipt of the Appeal. The Executive Director may take one of the following actions:

(A) Concur with the Appeal and make the appropriate adjustments to the staff's decision;

(B) Disagree with the Appeal, in concurrence with staff's original determination, and provide the basis for rejecting the Appeal to the Appealing Party; or

(C) In the case of appeals in exigent circumstances (such as conflict with a statutory deadline) or with the consent of the appellant, for appeals received five calendar days or less of the next scheduled Board meeting, the Executive Director may decline to make a decision and have the appeal deferred to the Board per the process outlined in subsection (f)(2) of this section, for final action.

(f) Process for Filing an Appeal of the Executive Director's Decision to the Board.

(1) If the Appealing Party is not satisfied with the Executive Director's response to the Appeal provided in subsection (e)(3) of this section, they may appeal in writing directly to the Board within seven calendar days after the date of the Executive Director's response.

(2) In order to be placed on the agenda of the next scheduled meeting of the Department's Board, the Appeal must be received by the Department at least fourteen days prior to the next scheduled Board meeting. Appeals requested under this section received after the fourteenth calendar day prior to the Board meeting will generally be scheduled at the next subsequent Board meeting. However, the Department reserves the right to place the Appeal on a Board meeting agenda if an Appeal that is timely filed under paragraph (1) of this subsection is received fewer than fourteen calendar days prior to the next scheduled Board meeting. The Executive Director shall prepare Appeal materials for the Board's review based on the information provided.

(3) If the Appealing Party receives additional information after the Executive Director has denied the Appeal, but prior to the posting of the Appeal for Board consideration, the new information must be provided to the Executive Director for further consideration or the Board will not consider any information submitted by the Applicant after the written Appeal. New information will cause the deadlines in this subsection to begin again. The Board will review the Appeal de novo and may consider any information properly considered by the Department in making its prior decision(s).

(4) Public Comment on an Appeal Presented to the Board. The Board will hear public comment on the Appeal under its Public Comment Procedures in §1.10 of this subchapter (relating to Public Comment Procedures). While public comment will be heard, persons making public comment are not parties to the Appeal, and no rights accrue to them under this section or any other Appeal process. Nothing in this section provides a right to Appeal any decision made on an Application, Commitment, Contract, Loan Commitment, or LURA if the Appealing Party does not have grounds to appeal as described in subsection (d) of this section.

(5) In the case of possible actions by the Board regarding Appeals, the Board may:

(A) Concur with the Appealing Party and grant the Appeal; or

(B) Disagree with the Appealing Party, in concurrence with the Executive Director's original determination, and provide the basis for rejecting the Appeal.

(C) In instances in which the Appeal, if granted by the Board would have resulted in an award to the Applicant, the Application shall be evaluated for an award as it relates to the availability of funds and staff will recommend an action to the Board in the meeting at which the Appeal is heard, or a subsequent meeting. If no funds are available in the current year's funding cycle, then the Appealing Party may be awarded funds from a pool of deobligated funds or other source, if available.

(D) In the case of actions regarding all other Appeals, the Board shall direct staff on what specific remedy is to be provided, allowable under current laws and rules.

(g) Board Decision. Appeals not submitted in accordance with this section will not be considered, unless the Executive Director or Board, in the exercise of its discretion, determines there is good cause to consider the appeal. The decision of the Board is final.

(h) Limited Scope. The appeals process provided in this rule is of general application. Any statutory or specific rule with a different appeal process, including the limitations expressed in subsection (a) of this section, will be governed by the more specific statute or rule. Except as provided for in §2.401 of this title, this section does not apply to matters involving a Contested Case Proceeding under §1.13 of this subchapter (relating to Contested Case Hearing Procedure).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 10, 2023.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 24, 2023
For further information, please call: (512) 475-3959

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CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER E. POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

10 TAC §§10.401 - 10.406

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 10, Subchapter E, §10.401 Housing Tax Credit and Tax Exempt Bond Developments; §10.402 Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants, or HUD Riders to Restrictive Covenants; §10.403 Review of

Annual HOME, HOME-ARP, HOME Match, NSP, TCAP-RF, and National Housing Trust Fund Rents; §10.404 Reserve Accounts; §10.405 Amendments and Extensions; and §10.406 Ownership Transfers (§2306.6713). The purpose of the proposed amendments is to make corrections to gain consistency across other sections of rule, correct references, clarify existing language and processes that will ensure accurate processing of post award activities, and to communicate more effectively with multifamily Development Owners regarding their responsibilities after funding or award by the Department.

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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed amendments would be in effect, the amendments do not create or eliminate a government program, but relate to changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.

2. The proposed amendments do not require a change in work that would require the creation of new employee positions, nor are the proposed amendments significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed amendments do not require additional future legislative appropriations.

4. The proposed amendments do not result in an increase in fees paid to the Department or in a substantial decrease in fees paid to the Department.

5. The proposed amendments are not creating a new regulation, but proposes revisions to provide additional clarification. The purpose of the amendment to §10.401(d)(2) is to make changes that result from passage of H.B. 4550 (88th Regular Legislature) passed by the House on May 2, 2023, and effective September 1, 2023, which requires that IRS Form(s) 8609 be issued no later than the 120th day following the date on which the Department received a complete cost certification package and the Development Owner has fulfilled any requests for information.

6. The proposed amendments will not repeal an existing regulation.

7. The proposed amendments will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed amendments will not negatively or positively affect this state's economy.

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

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

2. This rule relates to the procedures for the handling of post award and asset management activities of multifamily developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed amendments do not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect there will be no economic effect on local employment, because this rule only provides for administrative processes required of properties in the Department's portfolio. No program funds are channeled through this rule, so no activities under this rule would support additional local employment opportunities. Alternatively, the rule would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed amendments are in effect, the benefit anticipated as a result of the amended sections would be increased clarity and consistency across rule sections. There will not be economic costs to individuals required to comply with the amendment.

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 proposed amendments are in effect, enforcing or administering the amendments 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 November 24, 2023, to December 22, 2023, to receive input on the proposed amended sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Lee Ann Chance, Asset Management Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email to leeann.chance@tdhca.state.tx.us. ALL COM-

MENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time December 22, 2023.

STATUTORY AUTHORITY. The proposed amendments are made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed amendments affect no other code, article, or statute.

§10.401. Housing Tax Credit and Tax Exempt Bond Developments.

(a) 10% Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10% of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code and Treasury Regulations, 26 CFR §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (7) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10% Test will be contingent upon the submission of the items described in paragraphs (1) - (7) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for an extension will be reviewed on a case by case basis as addressed in §10.405(c) of this subchapter and §11.2 of this title, as applicable, and a point deduction evaluation will be completed in accordance with Tex. Gov't Code §2306.6710(b)(2) and §11.9(f) [~~§11.9(g)~~] of this title. Documentation to be submitted for the 10% Test includes:

(1) An Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner. If, at the time the accountant is reviewing and preparing their report, the accountant has concluded that the taxpayer's reasonably expected basis is different from the amount reflected in the Carryover Allocation agreement, then the accountant's report should reflect the taxpayer's reasonably expected basis as of the time the report is being prepared;

(2) Any conditions of the Commitment or Real Estate Analysis underwriting report due at the time of 10% Test submission;

(3) Evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site and a current title policy. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10% Test must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter (relating to Amendments and Extensions);

(4) A current survey or plat of the Development Site, prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the flood plain boundary lines and show all easements and encroachments;

(5) For New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(6) For the Development Owner and on-site or regional property manager, training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that a controlling Principal in the Development Owner structure and an on-site or regional property manager attended and passed at least five hours of Fair Housing training. For architects and engineers, training certificate(s) from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. Certifications required under this paragraph must not be older than two years from the date of submission of the 10% Test Documentation, and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates; and

(7) A Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment may be required in accordance with §10.405 of this subchapter (relating to Amendments and Extensions), and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(8) Evidence of submission of the CMTS Filing Agreement pursuant to §10.607(a) of this title (relating to Reporting Requirements).

(b) Construction Status Report (All Multifamily Developments). All multifamily Developments must submit a construction status report. Construction status reports shall be due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire Development is complete as evidenced by one of the following: Certificates of occupancy for each building, the Architect's Certificate(s) of Substantial Completion (AIA Document G704 or equivalent form) for the entire Development, the final Application and Certificate for Payment (AIA Document G702 and G703), or an equivalent form approved for submission by the construction lender and/or investor. For Competitive Housing Tax Credit Developments, the initial report due [~~must be submitted no later than~~] October 10th following the year of award (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans), and for Developments awarded under the Department's Multifamily Direct Loan programs only, the initial report is due by the 90th [~~must be submitted 90~~] calendar day [~~days~~] after loan closing. For Tax Exempt Bond Developments, the initial construction status report must be submitted as part of the Post Bond Closing Documentation and is due by the 60th [~~no later than~~] calendar day [~~days~~] following closing on the bonds. A Construction Status Report not submitted by the due date will incur an extension fee in accordance with §11.901 of this title (relating to Fee Schedule). The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) - (6) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in paragraphs (4) - (6) of this paragraph and must include any changes or amendments to items in paragraphs (1) - (3) if applicable:

(1) The executed partnership agreement with the investor or, for Developments receiving an award only from the Department's Direct Loan Program, other documents setting forth the legal structure and ownership. If identified Guarantors or Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amend-

ment must be requested in accordance with §10.405 of this subchapter, and the new Guarantors and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee);

(2) The executed construction contract for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(3) The construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(4) The most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor) for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(5) All Third Party construction inspection reports not previously submitted. If the lender and/or investor does not require third party construction inspection reports, the Development Owner must hire a third party inspector to perform these inspections on a quarterly basis and submit the reports to the Department. Third Party construction inspection reports must include, at a minimum, the date construction started (initial submission only), a discussion of site conditions as of the date of the site visit, current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date; and

(6) Minority Owned Business Report (HTC only) showing the attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as required and further described in Tex. Gov't Code §2306.6734.

(c) LURA Origination.

(1) The Development Owner must request origination of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. A copy of the fully executed, recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives a copy of the fully executed, recorded LURA.

(2) LURAs for Direct Loan awardees will be prepared by the Department's Legal Division and executed at loan closing.

(d) Cost Certification (Competitive and Non-Competitive HTC, and related activities only). The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. For Non-Competitive HTC Developments, the amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's determination as of each building's placement in service. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 120% of the amount of credits reflected in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 120% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director or designee. All credit increases are subject to the Tax-Exempt Bond Credit Increase Request Fee as described in Chapter 11, Subchapter E of this Part (relating to Fee Schedule, Appeals, and other Provisions). The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) For Competitive HTC Developments, Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code. For Tax-Exempt Bond Developments, Development Owners must file cost certification documentation no later than May 15 following the first year of the Credit Period.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator. In accordance with Tex. Gov't Code §2306.6724(g), IRS Form(s) 8609 will be issued no later than the 120th day following the date on which the Department receives a complete cost certification package, and the Development Owner has fulfilled any requests for information.

(3) The cost certification package must meet [~~IRS Form(s) 8609 will not be issued until~~] the conditions as stated in subparagraphs (A) - (G) of this paragraph [~~have been met~~]. The Development Owner has:

(A) Provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) Provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxiv) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Requirements include:

(i) Owner's signed and notarized Statement of Certification verifying the CPA firm's licenses and validity, including any restrictions;

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors;

(iii) Evidence of Qualified Nonprofit or CHDO Participation;

(iv) Certification and evidence of Historically Underutilized Business (HUB) Participation;

(v) Development Team List;

(vi) Development Summary with Architect's Certification;

(vii) Development Change Documentation;

(viii) As Built Survey;

(ix) A copy of the fully executed Closing Statement for each parcel of land and/or buildings purchased and included in the Development;

(x) Development Owner's Title Policy for the Development;

(xi) Title Policy Update;

(xii) Placement in Service;

(xiii) Evidence of Placement in Service;

(xiv) Architect's Certification of Completion Date and Date Ready for Occupancy (for Developments located in areas where Certificates of Occupancy (COs) are not issued by a local government or rehabilitation Developments that cannot provide COs);

(xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election;

(xvi) Independent Auditor's Report;

(xvii) Independent Auditor's Report of Bond Financing;

(xviii) Development Cost Schedule;

(xix) Contractor's Application for Final Payment (G702/G703) for the General Contractor, all prime subcontractors, Affiliated Contractors, and Related Party Contractors;

(xx) Additional Documentation of Offsite Costs;

(xxi) Rent Schedule;

(xxii) Utility Allowances;

(xxiii) Annual Operating Expenses;

(xxiv) 30 Year Rental Housing Operating Pro Forma;

(xxv) Current Operating Statement in the form of a trailing twelve month statement;

(xxvi) Current Rent Roll;

(xxvii) Summary of Sources and Uses of Funds;

(xxviii) Final Limited Partnership Agreement with all amendments and exhibits;

(xxix) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department);

(xxx) Architect's Certification of Accessibility Requirements;

(xxxi) Development Owner Assignment of Individual to Compliance Training;

(xxxii) TDHCA Compliance Training Certificate (not older than two years from the date of cost certification submission);

(xxxiii) TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division (IRS Form(s) 8609 will not be issued without a TDHCA Final Inspection Clearance Letter); and

(xxxiv) Other Documentation as Required, including but not limited to conditions to be satisfied at cost certification as reflected in the Development's latest Underwriting Report;

(C) Informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this subchapter (relating to Amendments and Extensions) and §10.406 of this subchapter (relating to Ownership Transfers (§2306.6713));

(D) Paid all applicable Department fees, including any past due fees;

(E) Met all conditions noted in the Department underwriting report, Determination Notice, and Commitment;

(F) Corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the corrective action period and/or with any uncorrected issues of noncompliance outside of the corrective action period will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Director or designee; and

(G) Completed an updated underwriting evaluation in accordance with Chapter 11, Subchapter D of this Part based on the most current information at the time of the review.

§10.402. Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants, or HUD Riders to Restrictive Covenants.

(a) Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants or HUD Riders to Restrictive Covenants from the Department must be reviewed and approved by the Department's Asset Management Division and Legal Division prior to execution. The Development Owner must demonstrate that the Development will remain feasible with the proposed new debt. For HTC Developments seeking to refinance within two years from the issuance of the IRS Form(s) 8609, a review of the Development's cost certification will be conducted to determine if the change in the financing structure would have affected the credit award. If it is determined that the change to the financing structure, net of additional costs associated with the refinance, would have resulted in over sourcing the Development, thereby resulting in an adjustment to the credit award, the Development Owner may be required to fund a Special Reserve Account in accordance with §10.404 of this subchapter (relating to Reserve Accounts) [~~and in an amount as allowed under §11.302(e)(12) of Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy)~~]. Approval from the Board will be required for loan amounts that would cause the Developments to be over-sourced after accounting for the additional costs associated with the refinance and the deposit into the Special Reserve Account. Subordinations or re-subordinations of Developments with Direct Loans from the Department are also subject to the requirements under §13.13(c)(2) of this title (relating to Multifamily Direct Loan Rule) and Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy), including but not limited to §11.302(g)(4).

(b) All requests must include:

(1) Requested document on Department approved template, if available, and completed with the Development specific information;

(2) Documentation such as a loan commitment or application that identifies the proposed loan amount and terms;

(3) If the proposed legal description is different from the legal description in the Department's regulatory agreement, a survey, title commitment, or recorded plat that agrees with the legal description in the requested document. Changes to the Development Site may be subject to further review and approval under §10.405 of this subchapter (relating to Amendments and Extensions); and

(4) Development's most recent 12-month trailing operating statement. If the financial statement indicates that the proposed new debt cannot be supported by the Development, the Development Owner must submit an operating pro forma and a written explanation for the differences from the actual performance of the Development.

§10.403. Review of Annual HOME, HOME-ARP, HOME Match, NSP, TCAP-RF, and National Housing Trust Fund Rents.

(a) Applicability. For participants of the Department's Multifamily HOME, HOME American Rescue Plan (HOME-ARP), and NSP Direct Loan program, where Commitment of Funds occurred on or after August 23, 2013, the Department is required by 24 CFR §92.252(f) and for all National Housing Trust Fund (NHTF) recipients by 24 CFR §93.302(c)(2), to review and approve or disapprove HOME/HOME-ARP/NSP/NHTF rents on an annual basis. The Department is also required by 24 CFR §92.219 and §92.252(d)(2) to approve rents for HOME Match units [~~where Multifamily Direct Loan funds (including TCAP-RF) are used as HOME match~~]. Development Owners must submit documentation for the review of HOME/HOME-ARP/HOME Match/NSP/NHTF/TCAP-RF rents by no later than August 1st of each year as further described in the Post Award Activities Manual.

(b) Documentation for Review. The Department will furnish a rent approval request packet for this purpose that will include a request for Development information and an Owner's proposed rent schedule and will require submission of a current rent roll, the most recent 12-month operating statement for the Development, and utility allowance information. The Department may request additional documentation to perform a determination, as needed, including but not limited to annual operating statements, market surveys, or other information related to determining whether rents are sufficient to maintain the financial viability of a project or are in compliance with maximum rent limits.

(c) Review Process. Rents will be approved or disapproved within 30 days of receipt of all items required to be submitted by the Development Owner, and will be issued in the form of a signed letter from the Asset Management Division. Development Owners must keep copies of all approval letters on file at the Development site to be reviewed at the time of Compliance Monitoring reviews.

(d) Compliance. Development Owners for whom this section is applicable are subject to compliance under §10.622 of this chapter (relating to Special Rules Regarding Rents and Limit Violations) and may be subject to penalties under §10.625 of this chapter (relating to Events of Noncompliance). Approval of rents by the Asset Management Division will be limited to a review of the documentation submitted and will not guarantee compliance with the Department's rules or otherwise absolve an Owner of any past, current, or future non-compliance related to Department rules, guidance, Compliance Monitoring visits, or any other rules or guidance to which the Development or its Owner may be subject.

§10.404. Reserve Accounts.

(a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Tex. Gov't Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3) - (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposits, for each Unit in a Development of 25 or more rental Units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other request under this subchapter and the Development does not have an existing replacement reserve account or sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a third party Physical Needs Assessment (PNA), the Development Owner will be required to establish and maintain a replacement reserve account or review whether the amount of regular deposits to the replacement reserve account can be increased, regardless of the number of Units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section and any additional or revised requirements the Department may impose after reviewing a Development's compliance history, a PNA submitted by the Owner, or the amount of reserves that will be transferred at the time of any property sale.

(1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:

(A) Date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90% occupied; or

(B) The date when the permanent loan is executed and funded.

(2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:

(A) Date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(B) Date on which the Development is demolished;

(C) Date on which the Development ceases to be used as a multifamily rental property; or

(D) End of the Affordability Period specified by the LURA, or if an Affordability Period is not specified and the Department is the First Lien Lender, then when the Department's loan has been fully repaid or as otherwise agreed by the Owner and Department.

(3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a separate, Development-specific Reserve Account through the date described in paragraph (2) of this subsection as follows:

(A) For New Construction and Reconstruction Developments, not less than $250 per Unit. Withdrawals from such account will be restricted for up to five years following the date of award except in cases in which written approval from the Department is obtained relating to casualty loss, natural disaster, reasonable accommodations, or demonstrated financial hardship (but not for the construction standards required by the NOFA or program regulations); or

(B) For Adaptive Reuse and Rehabilitation Developments, the greater of the amount per Unit per year either established by the information presented in a Scope and Cost Review in conformance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) or $300 per Unit per year.

(4) For all Developments, a PNA must be conducted at intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PNA, a PNA must be conducted at least once during each five-year period beginning with the 11th year after the awarding of any financial assistance from the Department. PNAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the 11th year of award must be submitted to the Department for review within 30 days of receipt by the Owner.

(5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in paragraph (3) of this subsection. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis, within the Department's required Development Owner's Financial Certification packet, requested information regarding:

(A) The reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(B) Compliance with the first lien lender requirements outlined in subparagraph (A) of this paragraph;

(C) If the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements; and

(D) Whether a PNA has been ordered and the Owner's plans for any subsequent capital expenditures, renovations, repairs, or improvements.

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Tex. Gov't Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with 30 days prior notice of all parties to the escrow agreement.

(7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated in this paragraph, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to $200 per dwelling Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed. Causes include:

(A) A Reserve Account, as described in this section, has not been established for the Development;

(B) The Department is not a party to the escrow agreement for the Reserve Account, if required;

(C) Money in the Reserve Account:

(i) is used for expenses other than necessary repairs, including property taxes or insurance; or

(ii) falls below mandatory annual, monthly, or Department approved deposit levels;

(D) Development Owner fails to make any required deposits;

(E) Development Owner fails to obtain a Third-Party PNA as required under this section or submit a copy of a PNA to the Department within 30 days of receipt; or

(F) Development Owner fails to make necessary repairs in accordance with the Third Party PNA or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 calendar days of written notice from the Department if the Development Owner fails to complete necessary repairs indicated in the submitted PNA or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will be allowed to produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. In the event the circumstances identified in subparagraphs (A) or (B) of this paragraph occur, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred Developer Fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, increase such payments or require a lump sum deposit to the reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Development Owner or deferred Developer Fee is insufficient to meet operating expense and debt service requirements; or

(B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels.

(9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

(10) In the event of paragraph (7) or (8) of this subsection occurring, the Department reserves the right to require by separate Reserve Agreement a revised annual deposit amount and/or require Department concurrence for withdrawals from the Reserve Account to bring the Development back into compliance. Establishment of a new

Bank Trustee or transfer of reserve funds to a new, separate and distinct account may be required if necessary to meet the requirements of such Agreement. The Agreement will be executed by the Department, Development Owner, and financial institution representative.

(b) Lease-up Reserve Account. A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two to six months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed 12 months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five years be included as a cost.

(d) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, except as allowed by §11.302(g)(4) of this title (relating to Underwriting Rules and Guidelines), or other payments made to Related Parties or Affiliates, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account unless otherwise approved by the Department. [~~Deposits to a Special Reserve at cost certification will be limited in accordance with §11.302(e)(12) of this title (relating to Underwriting Rules and Guidelines).~~] The account will be structured to require Department concurrence for withdrawals.

(2) All disbursements from the account must be approved by the Department.

(3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted by the Department and executed by the Department and the Development Owner.

(4) The Development Owner must make reasonable efforts to notify tenants of the existence of the Special Reserve Account and how to submit an application to access funds from the Special Reserve. Documentation of such efforts must be kept onsite and made available to the Department upon request.

(e) Other Reserve Accounts. At cost certification, reserves may not include capitalized asset management fees, guaranty reserves, tenant services reserves, working capital reserves, or other similar costs. [~~Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender, or syndicator.~~]

§10.405. Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6712). The Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsection at any time after the initial Board approval of the Development (§2306.6731(b)). The Board may deny an amendment request and subsequently may rescind any Commitment or Determination Notice issued for an Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Notification Items. The Department must be notified of the changes described in subparagraphs (A) - (F) of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request and any additional information or documentation requested. Notification items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department and include:

(A) Changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5%;

(B) Minor modifications to the site plan that will not significantly impact development costs, including, but not limited to,

relocation or rearrangement of buildings on the site (as long as the number of residential and non-residential buildings remains the same), and movement, addition, or deletion of ingress/egress to the site;

(C) Increases or decreases in net rentable square footage or common areas that do not result in a material amendment under paragraph (4) of this subsection;

(D) Changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) Changes in Developers or Guarantors (notifications for changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period are not required) with no new Principals (who were not previously checked by Previous Participation review that retain the natural person(s) used to meet the experience requirement in Chapter 11 of this title (relating to Qualified Allocation Plan)); and

(F) Any other amendment not identified in paragraphs (3) and (4) of this subsection.

(3) Non-material amendments. The Executive Director or designee may administratively approve all non-material amendments, including, but not limited to:

(A) Any amendment that is determined by staff to exceed the scope of notification acknowledgement, as identified in paragraph (2) of this subsection but not to rise to a material alteration, as identified in paragraph (4) of this subsection;

~~[(B) Changes in the natural person(s) used to meet the experience requirement in Chapter 11, §11.204(6) of this title provided that an appropriate substitute has been approved by the Multifamily Division prior to receipt of the amendment request (relating to Required Documentation for Application Submission);]~~

(B) [~~(C)~~] Changes in Developers or Guarantors (excluding changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period) not addressed in §10.405(a)(2)(E). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in Chapter 11 of this title and the credit limitation described in §11.4(a) of this title; and

(C) [~~(D)~~] For Exchange Developments only, requests to change elections made on line 8(b) of the IRS Form(s) 8609 to group buildings together into one or more multiple building projects. The request must include an attached statement identifying the buildings in the project. The change to the election may only be made once during the Compliance Period.

(4) Material amendments. Amendments considered material pursuant to this paragraph must be approved by the Board. When an amendment request requires Board approval, the Development Owner must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

(A) A significant modification of the site plan;

(B) A modification of the number of Units or bedroom mix of Units;

(C) A substantive modification of the scope of tenant services;

(D) A reduction of 3% or more in the square footage of the Units or common areas;

(E) A significant modification of the architectural design of the Development;

(F) A modification of the residential density of at least 5%;

(G) A request to implement a revised election under §42(g) of the Code prior to filing of IRS Form(s) 8609;

(H) Exclusion of any requirements as identified in Chapter 11, Subchapter B of this title (relating to Site and Development Requirements and Restrictions) and Chapter 11, Subchapter C of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or

(I) Any other modification considered material by the staff and therefore required to be presented to the Board as such.

(5) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department before a request for amendment will be acted upon.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) For amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence noted in either clause (i) or (ii) of this subparagraph must be presented to the Department to support the amendment:

(i) In the event of a request to implement (rent to a household at an income or rent level that exceeds the approved AMI limits established by the minimum election within the Development's Application or LURA) a revised election under §42(g) of the Code prior to an Owner's submission of IRS Form(s) 8609 to the IRS, Owners must submit updated information and exhibits to the Application as required by the Department and all lenders and the syndicator must submit written acknowledgement that they are aware of the changes

being requested and confirm any changes in terms as a result of the new election; or

(ii) For all other requests for reductions in the total number of Low-Income Units or reductions in the number of Low-Income Units at any rent or income level, prior to issuance of IRS Form(s) 8609 by the Department, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) If it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for 24 months from the time that the amendment is approved.

(b) Amendments to the LURA. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information related to any financial impact on the Development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions). The Department may order or require the Development Owner to order a Market Study or appraisal at the Development Owner's expense. If a Development has any uncorrected issues of non-compliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department, before a request for amendment will be acted upon. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), 24 CFR Part 93 (NHTF Interim Rule), Chapter 1 of this title (relating to Administrative Requirements), Chapter 11 of this title (relating to Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), Tex. Gov't Code, Chapter 2306, and the Fair Housing Act. For Tax-Exempt Bond Developments, compliance with their Regulatory Agreement and corresponding bond financing documents. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material LURA Amendments. The Executive Director or designee may administratively approve all LURA amendments not defined as Material LURA Amendments pursuant to paragraph (2) of this subsection. A non-material LURA amendment may include but is not limited to:

(A) HUB participation removal. Removal of a HUB participation requirement will only be processed as a non-material LURA amendment after the issuance of IRS Form(s) 8609 and requires that the Department find that:

(i) The HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(ii) the participation by the HUB has been substantive and meaningful, or would have been substantive or meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operating of affordable housing; and

(iii) where the HUB will be replaced as a general partner or special limited partner that is not a HUB and will sell its ownership interest, an ownership transfer request must be submitted as described in §10.406 of this subchapter;

(B) A change resulting from a Department work out arrangement as recommended by the Department's Asset Management Division;

(C) A change in the Right of First Refusal period as described in amended §2306.6726 of the Tex. Gov't Code;

(D) Where the Board has approved a de minimis modification of the Unit Mix or bedroom mix of Units to increase the Development's accessibility;

(E) In accordance with HOMEFires, Vol. 17 No. 1 (January 2023, as may be amended from time to time) bifurcation of the term of a HOME or NSP LURA with the Department that requires a longer affordability period than the minimum federal requirement, into a federal and state affordability period; or

(F) [~~(E)~~] A correction of error.

(2) Material LURA Amendments. Development Owners seeking LURA amendment requests that require Board approval must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting at which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4)). The Board must consider the following material LURA amendments:

(A) Reductions to the number of Low-Income Units;

(B) Changes to the income or rent restrictions;

(C) Changes to the Target Population;

(D) The removal of material participation by a Nonprofit Organization as further described in §10.406 of this subchapter;

(E) The removal of material participation by a HUB prior to filing of IRS Form(s) 8609;

(F) Any amendment that affects a right enforceable by a tenant or other third party under the LURA; or

(G) Any LURA amendment deemed material by the Executive Director.

(3) Prior to staff taking a recommendation to the Board for consideration, the Development Owner must provide reasonable notice and hold a public hearing regarding the requested amendment(s) at least 20 business days prior to the scheduled Board meeting where the request will be considered. Development Owners will be required to submit a copy of the notification with the amendment request. If a LURA amendment is requested prior to issuance of IRS Form(s) 8609

by the Department, notification must be provided to the recipients described in subparagraphs (A) - (E) of this paragraph. If an amendment is requested after issuance of IRS Form(s) 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) - (B) of this paragraph. Notifications include:

(A) Each tenant of the Development;

(B) The current lender(s) and investor(s);

(C) The State Senator and State Representative of the districts whose boundaries include the Development Site;

(D) The chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and

(E) The county commissioners of the county in which the Development Site is located (if the Development Site is located outside of a municipality).

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) - (D) of this paragraph:

(A) The Development Owner's name, address and an individual contact name and phone number;

(B) The Development's name, address, and city;

(C) The change(s) requested; and

(D) The date, time and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three business days after the date of the public hearing.

(6) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recording in the county where the Development is located.

(c) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10% Test (including submission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least 30 calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §11.901 of this title. Any extension request submitted fewer than 30 days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10% Test deadline(s), a point deduction evaluation will be completed in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) [~~§11.9(g)~~] of this title (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The exceptions to the ownership transfer process in this subsection are applicable.

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(5) Changes resulting from a deed-in-lieu of foreclosure do not require Executive Director approval. However, advance notification must be provided to both the Department and to the tenants at least 30 days prior to finalizing the transfer. This notification must include information regarding the applicable rent/income requirements post deed in lieu of foreclosure.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Persons and Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this Subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be

subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(5) Any initial operating, capitalized operating, or replacement reserves funded with an allocation from the HOME American Rescue Plan (HOME-ARP) and Special Reserves required by the Department must remain with the Development.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff will refer the matter to the Enforcement Committee for debarment consideration pursuant to §2.401 of this title (relating to Enforcement, Debarment from Participation in Programs Administered by the Department). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs), an Applicant may request a change [~~an amendment~~] to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package.

(3) Exceptions to paragraphs (1) and (2) of this subsection may be made on a case by case basis if the Development (for MFDL) is past its Federal Affordability Period or (for HTC Developments) is past its Compliance Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this subchapter. The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of IRS Form(s) 8609, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the LURA does not require it or the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved. The removal of a HUB requirement prior to filing of IRS Form(s) 8609 is subject to the procedure described in §10.405(b)(2) of this Chapter (relating to Material LURA Amendments).

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, terms of any new financing introduced as a result of the transfer, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(12)(B) [~~§11.204(13)(B)~~] of Subchapter C of this title (relating to Required Documentation for Application Submission);

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(12)(C) [~~§11.204(13)(C)~~] of this title (relating to Required Documentation for Application Submission);

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted as further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30-day period has expired; and

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of this title (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing Requirements and Written Policies and Procedures). The Development Owner on record with the Department will be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an ownership transfer has been approved by the Department. In the event a transferring Development has a history of uncorrected UPCS or NSPIRE violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this section (relating to Reserve Accounts).

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this title (relating to Fee Schedule).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 10, 2023.

TRD-202304185

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

The Texas State Library and Archives Commission (commission) proposes amendments to §2.1, Definitions; §2.2, Responsibilities of Commission and the Director and Librarian; §2.3, Procedures of Commission; §2.5; Advisory Committees; General Requirements; §2.7, Library Systems Act Advisory Board (LSA Board); §2.8, Texas Historical Records Advisory Board (THRAB); §2.9, TexShare Library Consortium Advisory Board (TexShare Advisory Board); §2.46, Negotiated Rulemaking; §2.48, Petition for Adoption of Rules; §2.53, Service Complaints; §2.55, Protest Procedure; §2.56, Training and Education of Staff; §2.60, Friends Groups; §2.70, Vehicle Fleet Management; §2.77, Contract Approval Authority and Responsibilities; §2.111, General Selection Criteria; §2.112, Eligible and Ineligible Expenses; §2.113, Peer Review; §2.114, Funding Decisions; and §2.120, Applicant Eligibility; and new §2.54, HUB Program; §2.110 Scope of Subchapter and Standards; and §2.115, Grant Recommendation and Award Process.

BACKGROUND. The Texas State Library and Archives Commission (TSLAC) recently concluded its quadrennial review of the rules located at 13 TAC Chapter 2, General Policies and Procedures, as required by Government Code, §2001.039. As a result of this review, TSLAC identified numerous needed changes to improve, update, and clarify the rules. TSLAC also identified several rules that are not necessary as administrative rules and proposes the repeals of those sections in this same issue of the *Texas Register.*

SECTION BY SECTION ANALYSIS. Proposed amendments to §2.1 modify the definition of "commission" to mean the seven-member governing body of the Texas State Library and Archives Commission and add a definition of "agency" to mean the Texas State Library and Archives Commission as an agency of the state of Texas, including the staff, collections, archives, operations, programs, and property of the Texas State Library and Archives Commission. TSLAC has been implementing this clarifying change throughout its rules as opportunities for amendment have occurred. TSLAC also proposes the deletion of several defined terms that are either not used in the chapter or for which a definition is not necessary.

Proposed amendments to §2.2 change "commission" to "agency" as necessary and change "chairman" to "chair."

Proposed amendments to §2.3 change "chairman" and "vice chairman" to "chair" and "vice-chair" and change "commission" to "agency" as necessary. An additional proposed amendment deletes unnecessary language.

Proposed amendments to §2.5 change "commission" to "agency" as necessary. Additional proposed amendments update language regarding reporting by advisory committees to the commission and the commission's evaluation of advisory committees.

Proposed amendments to §§2.7, 2.8, and 2.9 continue the commission's advisory committees for another four years.

Proposed amendments to §2.46 and §2.48 change "commission" to "agency" as necessary and make minor wording adjustments to improve the language.

Proposed amendments to §2.53 update and simplify the agency's process for receiving, reviewing, and responding to complaints. The existing rule mirrored the agency's protest procedures, which are not necessary for responding to general complaints regarding agency services.

Proposed new §2.54 updates the commission's HUB Program rule to reference the correct citations.

Proposed amendments to §2.55 change "commission" to "agency" and "chairman" to "chair" as necessary.

Proposed amendments to §2.56 change "commission" to "agency" as necessary and change the person responsible for approving employee training to the director and librarian or designee.

Proposed amendments to §2.60 and §2.70 change "commission" to "agency" as necessary.

Proposed amendments to §2.77 delete the definitions of "commission" and "agency" as they are no longer necessary for this rule due to the proposed definitional changes for the entire chapter.

In general, proposed changes to sections within Subchapter C, Division 1, General Grant Guidelines, consolidate rules that relate to the same topic or are repetitive, update and improve language for clarity regarding the commission's general grant requirements, reorder the rules for a more logical progression, and delete outdated and unnecessary requirements.

Proposed new §2.110 updates the chapter's scope to establish guidelines applicable to the awarding of grants and other rules necessary to the administration of TSLAC's grant programs. An amendment to this section also adopts the Uniform Grant Management Standards and the Texas Grant Management Standards as published by the Texas Comptroller of Public Accounts. This provision was previously a stand-alone section, §2.116 (relating to Texas Grant Management Standards).

Proposed amendments to §2.111 make minor wording improvements to the section.

Proposed amendments to §2.112 update the list of items that are generally ineligible for funding through competitive grants to mirror the requirements as stated in TSLAC's Notices of Funding Opportunities, which are written in compliance with federal and state guidelines. An additional proposed amendment updates a citation as necessitated by the proposed amendments.

Proposed amendments to §2.113 update the title of the section from Peer Review to Selection Process, and fold in the requirements of §2.117 (relating to Grant Review and Award Process) to the existing rule. Additional amendments update and clarify the language. As amended, §2.113 would outline TSLAC staff's review of grant applications and the process for staff in working with grant applicants on their applications; authorizes and explains the process for peer review panels; and outlines the process for the scoring of applications.

Proposed amendments to §2.114 make minor language updates and move the language previously codified at §2.115 (relating to Awarding of Grants) to proposed new subsection (e).

Proposed new §2.115 is titled Grant Recommendation and Award Process and consists of the language formerly codified at §2.118 (relating to Decision Making Process).

Proposed amendments to §2.120 make a minor wording update.

Additional proposed amendments throughout this rulemaking make grammatical updates and conform the language to Texas Register preferences.

FISCAL IMPACT. Donna Osborne, Chief Operations and Fiscal Officer, has determined that for each of the first five years the proposed amendments and new rules are in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the new or amended rules, as proposed.

PUBLIC BENEFIT AND COSTS. Gloria Meraz, Director and Librarian, has determined that for each of the first five years the proposed amendments and new rules are in effect, the anticipated public benefit will be consistency and clarity in the rules governing general agency procedures and in the agency's rules regarding general grant guidelines. There are no anticipated economic costs to persons required to comply with the proposed new rules or amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposal has no impact on local economy; therefore, no local employment impact statement under Government Code, §2001.022 is required.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed amendments and new rules do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Gov't Code §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed amendments and new rules will be in effect, the commission has determined the following:

1. The proposed amendments and new rules will not create or eliminate a government program;

2. Implementation of the proposed amendments and new rules will not require the creation of new employee positions or the elimination of existing employee positions;

3. Implementation of the proposed amendments and new rules will not require an increase or decrease in future legislative appropriations to the commission;

4. The proposed amendments and new rules will not require an increase or decrease in fees paid to the commission;

5. The proposal will create new regulations to replace rules proposed for repeal;

6. The proposal will repeal existing regulations but will not otherwise expand or limit existing regulations;

7. The proposed amendments and new rules will not increase the number of individuals subject to the proposed amendments' and new rules' applicability; and

8. The proposed amendments and new rules will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the proposed amendments and new rules do not constitute a taking under Texas Gov't Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments and new rule may be submitted to Sarah Swanson, General Counsel, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register.*

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §§2.1 - 2.3, 2.5, 2.7 - 2.9, 2.46, 2.48, 2.53 - 2.56, 2.60, 2.70, 2.77

STATUTORY AUTHORITY. The amendments and new rules are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §441.006, General Powers and Duties, which directs the commission to govern the state library; and §441.0065, Advisory Committees, which directs the commission to adopt rules regarding advisory committees.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.1. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) Agency--means the Texas State Library and Archives Commission as an agency of the state of Texas, including the staff, collections, archives, operations, programs, and property of the Texas State Library and Archives Commission.

(2) [~~(1)~~] Commission--means the seven-member governing body of the Texas State Library and Archives Commission. [~~The Texas State Library and Archives Commission.~~]

(3) [~~(2)~~] Competitive grant--Any grant awarded by the Texas State Library and Archives Commission based on competition among eligible entities for available grant funds.

(4) [~~(3)~~] Director and librarian--Chief executive and administrative officer of the Texas State Library and Archives Commission.

[~~(4) Loan period--A period of time beginning with the date the Texas State Library delivers or mails an item to a customer and ending with the date that the customer returns it to the library.~~]

[~~(5) Over-size paper copy--Any printed impression on paper larger than 8 1/2 inches by 14 inches. Each side of a piece of paper is counted as a single copy. A piece of paper that is printed on both sides is counted as two copies.~~]

(5) [~~(6)~~] State Archives--A non-circulating collection of Texas state and local government records, private papers, maps, photographs, newspapers, and published materials that documents the history of the State of Texas and the growth and actions of its government.

[~~(7) Texas State Library--The staff, collections, archives, and property of the Texas State Library and Archives Commission organized to carry out the commission's responsibilities.~~]

[~~(8) Friends group--An affiliated nonprofit organization whose purpose is to raise funds for or provide services or other benefits to the Texas State Library and Archives Commission and that has been so designated by the commission.~~]

§2.2. Responsibilities of Commission and the Director and Librarian.

(a) General Powers and Responsibilities. The commission is a seven-member [~~seven member~~] citizen board appointed by the governor with the advice and consent of the senate. The [~~commission is an~~] agency is within the executive branch, but functions independently within its statutory authority to serve the long-term public interest.

(b) Powers and Responsibilities of the Commission. The commission is responsible for establishing the policy framework through which the Texas State Library carries out its statutory responsibilities. The commission governs the library through the director and librarian. The staff of the library receive direction from the commission through the director and librarian. Specifically, the commission:

(1) adopts administrative rules that guide the staff in administering library programs;

(2) approves strategic and operating plans and requests for appropriations;

(3) approves all contracts as specified in §2.77 of this subchapter (relating to Contract Approval Authority and Responsibilities);

(4) approves all competitive grants, and all other grants of $100,000 or more, made by the library;

(5) acknowledges acceptance of gifts, grants, or donations of $500 or more that are in accord with the mission and purposes of the library;

(6) oversees operations of the library for integrity, effectiveness, and efficiency;

(7) acts as a final board of appeals for staff decisions or advisory board recommendations on grants, accreditation of libraries, certification of librarians, or other issues of concern to the public;

(8) selects the director and librarian and approves the selection of the assistant state librarian; and

(9) conducts a periodic performance review of the director and librarian.

(c) Powers and Responsibilities of the Director and Librarian. The director and librarian is responsible for the effective and efficient administration of the policies established by the commission. Specifically, the director and librarian:

(1) selects, organizes, and directs the staff of the library;

(2) establishes the operating budget for the library and allocates funds among strategies, programs, and projects within the limits

of statutory authority and as set forth in the General Appropriations Acts of the legislature;

(3) approves expenditures of funds in accordance with law;

(4) represents the commission and reports on behalf of the commission to the governor, the legislature, the public, or other organized groups as required;

(5) reports in a timely manner all relevant information first to the chair [~~chairman~~] and subsequently to all members of the commission, endeavoring to report to members of the commission in such a manner that the members are equally well informed on matters that concern the commission; and

(6) delegates his/her responsibilities to the assistant state librarian or other agency staff as appropriate.

§2.3. Procedures of Commission.

(a) Election of Officers. In accordance with statute, the chair [~~chairman~~] of the commission is designated by the governor. The vice-chair [~~vice-chairman~~] is elected by the members of the commission at the first meeting in even numbered years.

(b) Powers of the Chair [~~chairman~~]. The chair [~~chairman~~] shall call meetings of the commission, set the agenda for meetings of the commission, preside at meetings of the commission, and authenticate actions of the commission as necessary.

(c) Vice-Chair [~~Vice-Chairman~~]. The vice chair [~~vice-chairman~~] of the commission exercises the powers and authority of the chair [~~chairman~~] in the event of a vacancy, absence, or incapacity of the chair [~~chairman~~], including the authority to call a meeting, set the agenda, and act on behalf of the chair [~~chairman~~].

(d) Committees. The chair [~~chairman~~] shall appoint an audit committee, consisting of three members of the commission, one to serve as chair [~~chairman~~]. The audit committee will receive plans and reports from internal and external auditors, review and revise such plans and reports as needed, and recommend them to the commission for adoption and approval. The chair [~~chairman~~] shall appoint such other committees of the commission as may be deemed necessary.

(e) Meetings. The commission shall have regularly scheduled meetings five times per year. The chair [~~chairman~~] may call additional meetings of the commission as may be necessary, provided that adequate notice of such meetings shall be given in accordance with the Open Meetings Act (Government Code, Chapter 551). The chair [~~chairman~~] shall call a special meeting of the commission upon written request by a majority of the members of the commission. Any regularly scheduled meeting of the commission may be canceled by the chair [~~chairman~~], provided that ten days notification is given to the members of the commission.

(f) Agenda. The chair [~~chairman~~] shall establish the agenda for meetings of the commission with advice from other members and the director and librarian. Any person may request that an item be placed on the agenda of the next meeting of the commission by writing to the chair [~~chairman~~], with a copy to the director and librarian. Such item will be added to the agenda at the discretion of the chair [~~chairman~~], except that the chair [~~chairman~~] will place on the agenda any item requested by a majority of the members of the commission. Notice and agenda of commission meetings shall be posted by the director and librarian in accordance with the Open Meetings Act.

(g) Transaction of Business. As defined in the Open Meetings Act, a majority of the members of the commission, or four members, shall constitute a quorum. Meetings of the commission are conducted in a manner that welcomes public participation and complies with the spirit of the Open Meetings Act. At each meeting of the commission the agenda shall include a period for public comment of up to five minutes per individual. Actions of the commission are approved by a majority of the members present and voting. Proxies are not allowed.

(h) Minutes of Meetings. The director and librarian shall prepare minutes of commission meetings and file copies with members of the commission, the Legislative Reference Library, and the state publications program of the Texas State Library. Any changes or subsequent corrections of minutes at a commission meeting shall be filed in the same manner.

(i) Establishing, Amending, or Rescinding Existing Policy. The commission fosters an open administrative process with full public participation in rule making through advance publication of all proposed rules in the *Texas Register*. [~~, as well as in appropriate library newsletters. The commission intends to comply in spirit as well as technically with the Administrative Procedure Act (Government Code, Chapter 2001).~~]

(j) Travel of Commission Members. Members of the commission are entitled to reimbursement for actual expenses incurred to attend meetings of the commission subject to any applicable limitation on reimbursement provided by the General Appropriations Act or other act of the legislature. The chair [~~chairman~~] shall review and approve any claim for reimbursement of actual expenses reasonably incurred in connection with the performance of other services as a commission member, subject to any applicable limitation on reimbursement provided by the General Appropriations Act or other act of the legislature.

(k) Grants. The commission delegates to the director and librarian its authority to approve all grants that are less than $100,000, except competitive grants.

(l) Gifts and Donations. The commission delegates to the director and librarian its authority to accept gifts, grants and donations of less than $500 that are in accord with the mission and purposes of the commission. Any such gifts, grants or donations will be managed in accordance with principles of sound financial management and will be used for the purposes for which they are given.

(m) Advisory Committees. The chair [~~chairman~~] may establish and appoint committees to assist the commission in their deliberations as needed and for the period required.

(n) Code of Conduct. Members of the commission [~~,~~] and officers and employees of the agency [~~commission~~] will not solicit or accept any gift, favor, service, or thing of value that might reasonably tend to influence the member, officer, or employee in the discharge of official duties, or that the member, officer, or employee knows or should know is being offered with the intent of influencing the member's, officer's, or employee's official conduct. Members, officers, and employees of the commission will not accept employment, engage in a business or professional activity, or accept compensation that would:

(1) require or induce them to disclose confidential information acquired by virtue of official position;

(2) impair their independence of judgment in the performance of official duties; or

(3) create a conflict between their private interest and the public interest.

§2.5. Advisory Committees; General Requirements.

(a) Purpose and scope. This section governs procedures for the creation and operation of advisory committees, except as otherwise provided by law or commission rule. The purpose of an advisory committee is to make recommendations to the commission on programs, rules, and policies affecting the delivery of information services in the state. An advisory committee's sole role is to advise the commission.

An advisory committee has no executive or administrative powers or duties with respect to the operation of the commission, and all such powers and duties rest solely with the commission.

(b) Creation and duration of advisory committees. The commission shall create advisory committees by commission order. An advisory committee is abolished on the fourth anniversary of the date of its creation unless the commission designates a different expiration date for an advisory committee or an advisory committee has a specific duration prescribed by law.

(c) Appointment procedures. The commission will appoint members to an advisory committee based on advice and input from the director and librarian. Each advisory committee will elect from its members a presiding officer, who will report the advisory committee's recommendations to the commission.

(d) Size and quorum requirement. An advisory committee must be composed of a reasonable number of members not to exceed 24. A majority of advisory committee membership will constitute a quorum. An advisory committee may act only by majority vote of the members present at the meeting.

(e) Membership terms. Advisory committee members:

(1) may serve two- or four-year staggered terms, as ordered by the commission; and

(2) are appointed by and serve at the pleasure of the commission. If a member resigns, dies, becomes incapacitated, is removed by the commission, otherwise vacates the position, or becomes ineligible prior to the end of the member's term, the commission will appoint a replacement to serve the remainder of the unexpired term.

(f) Conditions of membership.

(1) Qualifications. To be eligible to serve as a member of an advisory committee, a person must have knowledge about and interests in the specific purpose and tasks of an advisory committee as established by commission order.

(2) Conflict of interest. Advisory committee members are subject to the same laws and policies governing ethical standards of conduct as those for commission members and employees.

(3) Training requirements. Each member of an advisory committee must complete training regarding the Open Meetings Act, Chapter 551 of the Government Code, and the Public Information Act, Chapter 552 of the Government Code.

(g) Administrative support. For each advisory committee, the director and librarian will designate a division of the agency [~~commission~~] that will be responsible for providing any necessary administrative support essential to the functions of the committee.

(h) Meetings.

(1) Meeting requirements. The division designated for an advisory committee under subsection (g) of this section shall submit to the Secretary of State notice of a meeting of the advisory committee. The notice must provide the date, time, place, and subject of the meeting. All advisory committee meetings shall be open to the public.

(2) Scheduling of meetings. Meeting dates, times, places, and agendas will be set by the division designated under subsection (g) of this section.

(3) Attendance. A record of attendance at each meeting of an advisory committee will be made. Unless otherwise provided by law, if a member of an advisory committee misses three consecutive advisory committee meetings, the member automatically vacates the position and the commission will appoint a new member to fill the remainder of the unexpired term created by the vacancy.

(i) Record. Agency [~~Commission~~] staff shall maintain minutes of each advisory committee meeting and distribute copies of approved minutes and other advisory committee documents to the commission and advisory committee members.

(j) Reporting recommendations. The agency shall report an [~~An~~] advisory committee's [~~committee shall report its~~] recommendations to the commission [~~in writing~~]. The presiding officer of an advisory committee or designee may appear before the commission to present the committee's recommendations.

(k) Reimbursement. Members of an advisory committee shall not be reimbursed for expenses unless reimbursement is authorized by law and approved by the director and librarian.

(l) Review of advisory committees. The agency [~~commission~~] shall monitor the composition and activities of advisory committees. To enable the commission to evaluate the continuing need for an advisory committee, the agency shall report on the advisory committee's work, usefulness, and costs, including the cost of agency staff time spent in support of the committee's activities, at least annually. [~~an advisory committee shall report in writing to the commission a minimum of once per year. The report provided by the advisory committee shall be sufficient to allow the commission to properly evaluate the committee's work and usefulness.~~]

(m) Compliance with the Open Meetings Act. An advisory committee shall comply with the Open Meetings Act, Government Code, Chapter 551.

(n) Rules. For each advisory committee appointed, the commission shall adopt rules that address the purpose of the advisory committee. The rules may address additional items, including membership qualifications, terms of service, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this subchapter.

§2.7. Library Systems Act Advisory Board (LSA Board).

(a) The LSA Board is created to advise the commission on matters relating to the Library Systems Act. The LSA Board's tasks include reviewing and making recommendations regarding the minimum standards for accreditation of libraries in the state library system, reviewing and making recommendations regarding the application of the standards to local libraries, reviewing and making recommendations regarding the future development of the Library Systems Act, reviewing and making recommendations regarding grant programs for local libraries, and reviewing and making recommendations regarding agency programs that affect local libraries.

(b) The LSA Board reports to the commission through its meetings and meeting minutes, and/or reports or letters to the Director and Librarian.

(c) The LSA Board membership consists of five librarians qualified by training, experience, and interest to advise the commission on the policy to be followed in applying Government Code, Chapter 441, Subchapter I, Library Systems. The term of office for each LSA Board member is three years.

(d) The LSA Board shall expire on February 20, 2028 [~~2024~~].

§2.8. Texas Historical Records Advisory Board (THRAB).

(a) The THRAB is created to serve as the central advisory body for historical records planning and projects funded by the National Historical Publications and Records Commission that are developed and implemented in this state and advise the Texas State Library

and Archives Commission on matters related to historical records in the state. The advisory board's tasks include those enumerated in Government Code §441.242.

(b) The advisory board reports to the commission through its meetings and meeting minutes, and/or reports or letters to the Director and Librarian.

(c) The THRAB is composed of:

(1) the state archivist, who shall be appointed as the historical records coordinator by the governor and who serves as presiding officer of the THRAB;

(2) two public members, appointed by the governor; and

(3) six members, appointed by the director and librarian, who must have recognized experience in the administration of government records, historical records, or archives.

(d) The terms of office for the members of the THRAB are as follows:

(1) The historical records coordinator serves a four-year [~~four year~~] term;

(2) The two public members appointed by the governor serve staggered terms of three years with the terms of the members expiring on February 1 of different years; and

(3) The six members appointed by the director and librarian serve staggered terms of three years with the terms of one-third of the members expiring on February 1 of each year.

(e) The THRAB shall expire on February 20, 2028 [~~2024~~].

§2.9. TexShare Library Consortium Advisory Board (TexShare Advisory Board).

(a) The TexShare Advisory Board is created to advise the commission on matters relating to the consortium.

(b) The TexShare Advisory Board membership shall represent the various types of libraries comprising the membership of the consortium, with at least two members representing the general public. Members must be qualified by training and experience to advise the commission on policy to be followed in applying Government Code, Chapter 441, Subchapter M, TexShare Library Consortium. TexShare Advisory Board members serve three-year terms beginning September 1.

(c) The TexShare Advisory Board shall expire on February 20, 2028 [~~2024~~].

§2.46. Negotiated Rulemaking.

(a) It is the commission's policy to engage in negotiated rulemaking procedures under Government Code, Chapter 2008, when appropriate. When the agency [~~commission~~] finds that proposed rules are likely to be complex or controversial, or to affect disparate groups, negotiated rulemaking may be proposed.

(b) When negotiated rulemaking is proposed, the director and librarian will appoint a convenor to assist in determining whether it is advisable to proceed. The convenor shall perform the duties and responsibilities contained in Government Code, Chapter 2008.

(c) If the convenor recommends proceeding with negotiated rulemaking and the commission adopts the recommendation, the commission shall initiate negotiated rulemaking according to the provisions of Government Code, Chapter 2008.

§2.48. Petition for Adoption of Rules.

(a) Any interested person may petition the agency [~~commission~~] requesting the adoption of a rule.

(b) At a minimum, a petition under this section must be in writing directed to the director and librarian and contain the following:

(1) A clear and concise statement of the substance of the proposed rule, together with a brief explanation of the purpose to be accomplished through such adoption;

(2) The petitioner's full name, Texas address, telephone number, and signature; and

(3) The chapter and subchapter in which, in the petitioner's opinion, the rule belongs, and the proposed rule text of a new rule or the text of the proposed rule change prepared in a manner to indicate the words to be added or deleted from the current text, if any.

(c) Within 60 days after receipt, the agency [~~commission~~] will either deny the petition in writing, stating its reasons therefore, or will initiate rulemaking proceedings in accordance with the Administrative Procedure Act (Government Code, Chapter 2001, Subchapter B).

(d) If rulemaking procedures are initiated under this section, the version of the rule [~~which~~] the agency [~~commission staff~~] proposes may differ from the version proposed by the petitioner.

§2.53. Service Complaints.

(a) Complaints regarding agency services [~~For the purpose of improving services to the public and resolving complaints about services of the Texas State Library, state publications of the library as defined in §3.1 of this title (relating to State Publications Depository Program) shall include a notice that complaints may be made~~] must be submitted in writing to the director and librarian [~~with the director's mailing address and telephone number. Such notice shall also be posted in all public service areas and public access computer systems~~]. Complaints may be mailed to Director and Librarian, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711-2927; hand-delivered at 1201 Brazos Street, Austin, Texas, 78701, or sent by email to dir.lib@tsl.texas.gov. The agency will review, investigate, and respond to complaints within 10 business days from the date the complaint is received. The agency will notify the complainant if additional time is necessary to investigate a complaint.

[~~(b) Complaints regarding service delivery, grants and the administration of grants will be processed promptly and efficiently in accordance with the procedures outlined in §2.55 of this title (relating to Protest Procedure).~~]

(b) [~~(c)~~] The agency [~~commission~~] will maintain a record of complaints filed. This will include information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(c) [~~(d)~~] The agency [~~commission~~] will make information available describing its procedures for complaint investigation and resolution. [~~The commission will periodically notify the complaint parties of the status of the complaint until final disposition.~~]

§2.54. HUB Program.

The commission adopts the rules of the Comptroller of Public Accounts relating to the Historically Underutilized Business (HUB) Program at 34 TAC, Part 1, Chapter 20, Subchapter D, Division 1.

§2.55. Protest Procedure.

(a) An aggrieved person who is not satisfied with a decision, procedure, or service received from agency [~~the~~] staff of the commission or who is an actual or prospective bidder, grantee, or contractor aggrieved in connection with a solicitation, evaluation, or award may file a protest with the director and librarian in accordance with this rule.

(b) A protest must be submitted to the director and librarian within 21 days after the person knows or should have known of the

matter that is protested. The director and librarian has the discretion to allow a protest filed after 21 days if the protestant shows good cause for the late filing or if the protest raises an issue significant to the general policies and procedures of the commission.

(c) The protestant shall mail or deliver a copy of the protest to all interested persons. The director and librarian will furnish a list of interested persons to a protestant. For protests of a competitive selection (bid, contract, or grant), interested persons shall include all persons who have submitted a bid, proposal, or application.

(d) A protest must be in writing and identified as a protest under commission rule 13 TAC §2.55 and contain the following:

(1) a description of the protestant's interest in the matter;

(2) the issue(s) to be resolved and remedy(s) requested;

(3) the protestant's argument supporting the protest, including a statement of relevant facts and applicable law, specifying the statutes, rules, or other legal authority alleged to have been violated;

(4) the protestant's affirmation that facts set forth in the protest are true; and

(5) a certification that a copy of the protest has been mailed or delivered to all interested persons.

(e) Upon receipt of a protest conforming to the requirements of this section, the agency [~~commission~~] shall not proceed with the solicitation, award, or contract until the protest is resolved, unless the director and librarian makes a written determination that delay would harm the substantial interests of the state.

(f) The director and librarian has the authority to decide, settle, or resolve the protest and will make a written determination. The director and librarian may solicit written responses to the protest from other parties. The director and librarian shall inform the protesting party and other interested parties by letter of his determination, how to appeal the determination to the commission, and how to respond to any appeal that is filed.

(g) An interested party may appeal the determination of the director and librarian. An appeal must be in writing and conform to paragraphs (1)-(3) of this subsection:

(1) the appeal must be received in the office of the director and librarian no later than 15 days after the date the determination is mailed to interested parties;

(2) a copy of the appeal must be mailed or delivered by the appealing party to all interested parties and contain a certification of mailing or delivery;

(3) the appealing party must state whether or not an opportunity is requested to make an oral presentation to the commission in open meeting.

(h) The director and librarian shall refer the matter to the commission for their consideration at an open meeting.

(i) The chair [~~chairman~~] of the commission has the discretion to allow an appeal filed more than 15 days after the director and librarian's determination if the appealing party shows good cause for the late filing or if the appeal raises an issue significant to the general policies or procedures of the commission.

(j) An interested party may file a response to an appeal of the determination of the director and librarian no later than 15 days after the appeal is mailed or delivered. The chair [~~chairman~~] of the commission has the discretion to allow a response filed more than 15 days after the appeal of the determination by the director and librarian if the interested party shows good cause for the late filing or if the response raises an issue significant to the general policies or procedures of the commission.

(k) Copies of the appeal and responses of interested parties, if any, shall be mailed to the commission by the director and librarian.

(l) The chair [~~chairman~~] of the commission has the discretion to decide whether or not a request for oral presentations will be granted and will set the order and amount of time for oral presentations that are allowed. The chair [~~chairman~~] also has the discretion to decide whether presentations and written documents presented by agency [~~commission~~] staff and interested parties will be allowed.

(m) The commission will determine properly filed appeals and make its decision in open meeting. The commission shall vote to uphold or reverse the decision of the director and librarian. Failing a majority vote of the commission to reverse, the director and librarian's decision is upheld. The commission's decision is final and not subject to judicial review under the statutes governing the commission.

(n) A decision issued either by the commission in open meeting or in writing by the director and librarian shall be the final administrative action of the commission.

(o) Documentation concerning a protest of a competitive selection is part of the agency's [~~commission's~~] records series for that selection and is retained in accordance with the agency's [~~commission's~~] approved records retention schedule.

§2.56. Training and Education of Staff.

(a) The purposes of the agency's [~~commission's~~] training program are all work-related, and include meeting technological or legal requirements, developing additional work skill capabilities, or increasing competence or performance. The agency's [~~commission's~~] training program includes all education, workshops, seminars, and similar instruction.

(b) The agency [~~commission~~] may provide training to any of its employees to enable them to perform their current duties more effectively. The agency [~~commission~~] may also provide training to selected employees to enable them to perform prospective duties needed by the agency.

(c) The agency [~~commission~~] may require an employee to attend any necessary training program.

(d) Employee training must be recommended by the division director and approved by the director and [~~assistant state~~] librarian or designee.

(e) When training is approved, the agency [~~commission~~] will either pay the training costs[~~,~~] or allow the employee's schedule to accommodate the training (by rearranging work hours[~~,~~] or allowing the training to be taken as work time), or both.

(f) After attending training, an employee must submit a report of the training to the Human Resources Office of the agency [~~commission~~] within three working days. The employee must make an oral or written presentation to other employees, if requested.

(g) An employee who fails to complete the training must reimburse the agency [~~commission~~] for the cost of the training, except for reasons beyond the employee's control.

(h) In this section, "special training" means instruction, teaching, or other education received by a state employee that is not normally received by other state employees and that is designed to enhance the ability of the employee to perform the employee's job. Special training does not include training required by either state or federal law or that is determined necessary by the agency [~~commission~~] and offered

to all employees performing similar jobs. Special training does include a course of study at an institution of higher education.

(i) The agency [~~commission~~] may provide special training to selected employees to enhance their ability to perform their current or prospective duties.

(j) Employees must be recommended by their division director and approved by the assistant state librarian for special training.

(k) If an employee is to receive special training that will be paid by the agency [~~commission~~], and during the training period the employee will not perform regular duties for three or more months as a result of the training, the employee must agree in writing to the requirements of Government Code §656.103 and §656.104.

(l) An employee may be released from these requirements if the commission in open meeting finds that such action is in the best interest of the agency, or because an extreme personal hardship would be suffered by the employee.

§2.60. Friends Groups.

(a) The commission may designate nonprofit organizations that are organized to raise funds and provide services and other benefits to the agency [~~commission~~] as a "friend" of the commission. A friends group must submit copies of its charter and bylaws or other organizational documents to the commission for review and approval. Upon designation as a friend of the commission and for so long as such designation exists, the commission may recognize a friends group. Designation as a "friend" shall be reviewed periodically but not less than once every five years.

(b) Funds accepted by friends groups for the benefit of the commission to support the purposes and programs of the commission are to be managed as reasonably prudent persons would manage funds if acting on their own behalf. Such funds are to be accounted for according to generally accepted accounting principles. A financial report shall be prepared at least annually and made available to the public upon request.

(c) The commission may authorize reasonable use of agency [~~commission~~] employees, equipment, or property by recognized friends groups in order to further or support the purposes or programs of the commission, provided such usage is commensurate with the benefit received or to be received by the commission. Agency [~~Commission~~] employees shall receive no compensation from the friends groups for such service.

(d) A commission member or agency employee [~~of the commission~~] may not serve as an officer or director of a friends group. The commission will designate not more than one of its members to serve as liaison to each friends group.

(e) Nothing in this section shall supersede any rule or statute regulating the conduct of an employee of a state agency or the procedures of a state agency. To the extent of any conflict, the other rule or statute shall prevail.

§2.70. Vehicle Fleet Management.

(a) To the extent applicable, the commission adopts the Texas State Vehicle Fleet Management Plan developed by the Office of Vehicle Fleet Management, Statewide Procurement Division of the Texas Comptroller of Public Accounts.

(b) The director and librarian will designate a vehicle fleet manager for the agency [~~commission~~].

(c) The vehicle fleet manager, with executive approval, is responsible for:

(1) managing the agency's [~~commission's~~] vehicle fleet in accordance with the State Vehicle Fleet Management Plan;

(2) observing and enforcing statewide fleet management policies and procedures at the agency level; and

(3) developing written policies and procedures for managing commission vehicles that implement, to the extent feasible, the Best Practices guidelines of the State Vehicle Fleet Management Plan.

(d) Each agency [~~commission~~] vehicle is assigned to the agency [~~commission~~] motor pool and is available for checkout for official business by employees who are authorized to drive agency vehicles, with the advance approval of the executive or the vehicle fleet manager.

(e) The agency [~~commission~~] may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the agency [~~commission~~] makes a written documented finding that the assignment is critical to the needs and mission of the agency [~~commission~~].

§2.77. Contract Approval Authority and Responsibilities.

(a) Purpose. The purpose of this rule is to establish the approval authority and responsibilities for executing contracts required by the agency.

(b) Applicability. This rule applies to all contracts entered into by the agency.

(c) Definitions. As used in this section, the following terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) [~~Agency--means Texas State Library and Archives Commission as an agency of the state of Texas, including the staff, collections, archives, operations, programs, and property of the Texas State Library and Archives Commission.~~]

[~~(2) Commission--means the seven-member governing body of the Texas State Library and Archives Commission.~~]

[~~(3)~~] ~~Contract--means a written agreement between the agency and a contractor for goods or services. As used in this section, "contract" includes the following: interagency contracts with other government entities; interlocal agreements with other government entities; and other documents in which funds or services allocated to the agency are exchanged for the delivery of other goods or services.~~

(2) [~~(4)~~] Value--means the estimated dollar amount the agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions, and renewals of the contract. The agency shall base its determination of the proposed length of and compensation during the original term and renewal periods of the contract on best business practices, state fiscal standards, and applicable law, procedures, and regulations. The agency's determination of contract value reflects the definition set forth in the State of Texas Contract Management Guide as developed by the comptroller under Government Code, §2262.051.

(d) Approval Authority.

(1) Commission Approval. The director and librarian or designee shall present certain contracts to the commission for approval. The commission shall consider for approval:

(A) any contract or amendment with a value expected to exceed $1 million;

(B) any amendment to a contract that results in the contract value exceeding $1 million;

(C) any contract or amendment to a contract that relates to the TexShare Library Consortium regardless of overall contract value; and

(D) any other contract deemed appropriate for commission approval as determined by the director and librarian in consultation with the chair of the commission.

(2) Agency Approval.

(A) The commission delegates authority to the director and librarian or designee to approve all contracts not listed in paragraph (1) of this subsection;

(B) The commission delegates authority to the director and librarian or designee to approve contracts with an overall contract value that exceeds $1 million as approved by commission order; and

(C) The commission delegates authority to the director and librarian to approve a purchase request or contract listed in paragraph (1) of this subsection for an emergency as defined in 34 TAC §20.25 (relating to Definitions), or to avoid undue material additional cost to the state. The director and librarian shall report any purchase requests or contracts executed by the director and librarian under this authority to the commission chair prior to execution of any such purchase requests or contracts.

(e) Authority to Execute Contracts. The commission delegates authority to the director and librarian to execute all contracts for the agency. This authority may be delegated by the director and librarian to the assistant state librarian or other designee.

(f) Contract Planning. The agency will present to the commission for information a contract plan for the next fiscal year that outlines the agency's anticipated contracting actions that exceed $500,000. The director and librarian or designee will present updates to the contract plan to the commission for information periodically throughout the fiscal year.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Sarah Swanson
General Counsel
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5460

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SUBCHAPTER C. GRANT POLICIES
DIVISION 1. GENERAL GRANT GUIDELINES

13 TAC §§2.110 - 2.115, 2.120

STATUTORY AUTHORITY. The amendments and new rules are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §441.0091, Grant Program for Local Libraries, which authorizes the commission to adopt by rule guidelines for awarding grants; §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.110. Scope of Subchapter.

(a) Texas Government Code, Chapter 441, authorizes the commission to establish a program of grants using state, federal, or other funds. This subchapter establishes the guidelines for awarding grants and other rules necessary to the administration of these grant programs. [~~The agency operates a variety of grant programs including negotiated, competitive, and formula grants. This subchapter applies to all types of grant programs. However, §§2.112, 2.113, 2.117, 2.118, and 2.119 of this title (relating to Eligible and Ineligible Expenses, Peer Review, Grant Review and Award Process, Decision Making Process, and Multiple Applications) apply only to competitive grant programs. Formula grant guidelines are also specified in §2.810 et al (relating to Loan Star Libraries grants), and §1.41 et al (relating to Library Systems grants).~~]

(b) The agency adopts by reference the Uniform Grant Management Standards and the Texas Grant Management Standards as published by the Texas Comptroller of Public Accounts.

§2.111. General Selection Criteria.

(a) Grants shall be awarded based on guidelines that reflect applicable state or federal priorities and mandates. The grant guidelines issued by the agency will specify the timetable, forms, procedures, and any supplemental criteria or requirements applicable to a particular grant for that year. Grant guidelines include the goals describing the purpose of the grant program, applicant eligibility requirements, description of the services to be provided, applicable priorities and restrictions, [~~and~~] the selection criteria, and the process to evaluate grant applications and select awards. [~~Selection criteria and requirements are designed to select applications that provide the best overall value to the state.~~]

(b) The general selection criteria include:

(1) applicant eligibility;

(2) relevance to goals;

(3) program impact;

(4) program scope and quality;

(5) the cost of proposed service;

(6) measurability of service impact; and

(7) compliance with requirements.

(c) The agency [~~commission~~] may consider additional factors in the selection process [~~determining best value~~], including:

(1) financial ability to perform services;

(2) state and regional service needs and priorities;

(3) improved access for underserved [~~poorly served~~] areas and populations;

(4) improved access to funding for libraries that have not received grants from the agency within a specified time frame to be determined by the agency or that have limited resources;

(5) ability to continue services after grant period; and

(6) past performance and compliance.

§2.112. Eligible and Ineligible Expenses.

(a) Except as provided in grant guidelines, competitive grants may fund costs for staff, equipment, capital expenditures, supplies,

professional services, and other typical operating expenses, as permitted by §2.110(b) [§2.116] of this title (relating to Scope of Subchapter [Texas Grant Management Standards]). The purpose of competitive grants is not for collection development [,] or other activities primarily focused on the acquisition of library materials or resources.

(b) Except as provided in grant guidelines, competitive grants may not fund the following [costs, in addition to those not permitted by §2.116 of this title]:

(1) Capital expenditures related to the purchase of real property or buildings; [building construction or renovation;]

(2) Capital expenditures related to the construction or expansion of facilities, including fixtures and services;

(3) Capital expenditures related to renovation costs, including fixtures and services;

(4) [(2)] Food [food], beverages, or food delivery equipment or services; [awards, honoraria, prizes, or gifts;]

(5) Awards, honoraria, prizes, gifts, or incentives;

(6) [(3)] Equipment [equipment] or technology not specifically needed to carry out the goals of the grant;

(7) [(4)] Transportation [transportation] /travel for project participants or non-grant funded personnel;

(8) [(5)] Databases [databases] currently offered or similar to ones offered by the agency (i.e., a magazine index database may not be purchased if a comparable one is provided by the agency);

(9) [(6)] Collection [collection] development purchases not targeted directly to the grant goals nor integral to the service program;

(10) [(7)] Advertising [advertising] or public relations costs not directly related to promoting awareness of grant-funded activities; [or]

(11) [(8)] Performers [performers] or presenters whose purpose is to entertain rather than to educate; or [.]

(12) Other expenses as excluded in the grant guidelines.

§2.113. Selection Process. [Peer Review]

(a) To be eligible for review, each application must be submitted by the specified deadline with all required components and all necessary authorization signatures.

(b) Agency staff will review each application for the following: [The director and librarian may select professionals, citizens, community leaders, and agency and library staff to evaluate grant applications. Peer reviewers must have appropriate training or service on citizen boards in an oversight capacity and may not evaluate grant applications in which there is, or is a possible appearance of, a conflict of interest.]

(1) legal eligibility of the institution to participate in a grant program and appropriate authorizing signature;

(2) conformance to the federal and state regulations pertaining to grants;

(3) inclusion of unallowable costs;

(4) errors in arithmetic or cost calculations;

(5) submission of all required forms;

(6) compliance with submission procedures and deadlines; and

(7) relevance and appropriateness of the project design and activities to the purpose of the grant program.

(c) Agency staff will raise issues and questions regarding the needs, methods, staffing and costs of the applications. Staff will also raise concerns regarding the relevance and appropriateness of the project design and activities to the purpose of the grant program. Staff comments will be sent to the review panel with the applications for consideration by the panel. [The agency staff will distribute selected applications to reviewers and will provide written instructions or training for peer reviewers. Reviewers must complete any training prior to reviewing applications.]

(d) Applicants will be sent a copy of the staff comments to give applicants an opportunity to respond in writing. Applicants may not modify the proposal in any way; however, applicants' responses to staff comments will be distributed to the panel. [The reviewers score each application according to the review criteria and requirements stated in the grant guidelines.]

(1) Applications with significant errors, omissions, or eligibility problems will not be rated. Applications in which the project design and activities are not relevant and appropriate to the purpose of the grant program will be ineligible.

(2) Agency staff will be available to offer technical assistance to reviewers.

(e) [(a)] The agency [commission] may use peer review panels to evaluate applications in competitive grant programs.

(1) Peer reviewers may include professionals, citizens, community leaders, and agency and library staff to evaluate grant applications. Peer reviewers must have appropriate training or service on citizen boards in an oversight capacity and may not evaluate grant applications in which there is, or is a possible appearance of, a conflict of interest.

(2) The agency staff will distribute selected applications to reviewers and will provide written instructions or training for peer reviewers. Reviewers must complete any training prior to reviewing applications.

(3) The reviewers will score each application according to the review criteria and requirements stated in the grant guidelines.

(4) Each evaluation of an application for competitive grants shall be appropriately documented by the peer reviewer conducting the evaluation. The documentation shall include the scores assigned by the peer reviewer. The peer reviewer may also include comments that may be shared with the applicant.

[(c) Each peer review evaluation of an application for competitive grants shall be appropriately documented by the peer reviewer conducting the evaluation. The documentation shall include the scores assigned by the peer reviewer. The peer reviewer may also include comments that may be shared with the applicant.]

(f) Applications will be scored using the following process:

(1) The peer reviewers will review all complete and eligible grant applications forwarded to them by agency staff and complete a rating form for each. Each reviewer will evaluate the proposal in relation to the specific requirements of the criteria and will assign a value, depending on the points assigned to each criterion.

(2) No reviewer who is associated with an applicant or who stands to benefit directly from an application will serve on the review panel for the grant program in which the application is submitted for that grant cycle. Any reviewer who is associated with a potential applicant in the respective category must inform the agency and their organ-

ization about a potential conflict of interest. Any reviewer who feels unable to evaluate a particular application fairly may choose not to review that application.

(3) Reviewers will consider and assess the strengths and weaknesses of any proposed project only on the basis of the documents submitted. Considerations of geographical distribution, demographics, type of library, or personality will not influence the assessment of a proposal by the review panel. The panel members must make their own individual decisions regarding the applications. The panel may discuss applications, but the panel's recommendations will be compiled from the individual assessments, not as the result of a collective decision or vote.

(4) Reviewers may not discuss proposals with any applicant before the proposals are reviewed. Agency staff is available to provide technical assistance to reviewers. Agency staff will conduct all negotiations and communication with the applicants.

(5) Reviewers may recommend setting conditions for funding a given application or group of applications (e.g., adjusting the project budget, revising project objectives, modifying the timetable, amending evaluation methodology, etc.). The recommendation must include a statement of the reasons for setting such conditions. Reviewers who are ineligible to evaluate a given proposal will not participate in the discussion of funding conditions.

(6) Reviewers will submit their evaluation forms to the agency. In order to be counted, the forms must arrive before the specified due date.

[~~(f) To be eligible for review, each application must be submitted by the specified deadline with all required components and all necessary authorization signatures.~~]

§2.114. Funding Decisions.

(a) The agency staff will submit a recommended priority-ranked list of applicants for possible funding. Final approval of a grant award will be made by the commission in an open meeting. [~~is solely at the determination of the State Library and Archives Commission~~].

(b) Applications for grant funding will be evaluated only upon the information provided in the written application, including attachments, if any.

(c) The agency staff may negotiate with selected applicants to determine the terms of the award. To receive an award, the applicant must accept any additional or special terms and conditions listed in the grant contract and any changes in the grant application.

(d) The agency staff will notify unsuccessful applicants in writing.

(e) The agency has the right to reject applications or cancel or modify a grant solicitation at any point before a contract is signed. The award of any grant is subject to the availability of funds.

§2.115. Grant Recommendation and Award Process.

To be considered eligible for funding, any application must receive a minimum adjusted mean score of more than 60 percent of the maximum points available. However, eligibility does not guarantee funding. The commission may also choose to award extra points to libraries that have not received funding within a specified time frame to be determined by the agency or that have limited resources. To reduce the impact of scores that are exceedingly high or low, or otherwise outside the range of scores from other reviewers, agency staff will tabulate the panel's work using calculations such as an adjusted mean score.

(1) Applications will be ranked in priority order by score for consideration by the commission.

(2) If insufficient funds remain to fully fund the next application, the staff may negotiate a reduced grant with the next ranked applicant.

(3) If the panel recommends funding an application that, for legal, fiscal, or other reasons, is unacceptable to the staff, a contrary recommendation will be made. The applicant will be informed of this situation prior to presentation to the commission and may negotiate a revision to the application. A positive recommendation to the commission will be contingent upon successfully completing these negotiations prior to the commission meeting.

(4) If the panel is unable to produce a set of recommendations for funding, the agency staff will use the same evaluation procedures to develop recommendations to the commission.

§2.120. Applicant Eligibility.

(a) Each notice of funding opportunity for a specific grant program [~~authorized by commission rule~~] will identify one or more of the following Texas entities as an eligible applicant:

(1) public libraries;

(2) TexShare Library Consortium member institutions; or

(3) nonprofit organizations.

(b) A public library is eligible for a grant program if it is accredited under Subchapter C of Chapter 1 of this Title (relating to Minimum Standards for Accreditation of Libraries in the State Library System).

(c) A nonprofit organization is eligible if it is applying on behalf of accredited public libraries as defined by this section or TexShare member institutions, and the nonprofit organization's organizational charter, operating guidelines, or mission statement includes providing direct support for activities and goals of one or more public libraries or TexShare member institutions as a defined objective.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 2. GENERAL POLICIES AND PROCEDURES

The Texas State Library and Archives Commission (commission) proposes the repeal of §2.4, Principles; §2.10, §2.54, Bid Procedures and HUB Program, Dual Office Holding; §2.58, Use of Technology; §2.110, Scope of Subchapter; §2.115, Awarding of Grants; §2.116, Texas Grant Management Standards; §2.117, Grant Review and Award Process; §2.118, Decision Making Process; §2.210, Negotiated Grants; §2.211, Resource Sharing--Interlibrary Loan Grants; §2.212, Technical Assistance

Grants; §2.213, System Integrated Negotiated Grants; §2.610, Goals and Purposes; §2.611, Eligible Applicants; §2.612, Criteria for Award; §2.810, Goals and Purposes; §2.811, Definitions; §2.812, Eligible Applicants; §2.813, Eligible Expenses; §2.814, Funding Formula; §2.815, Application Review and Awarding Process; §2.910, Goals and Purposes; §2.911, Eligible Applicants; and §2.912, Criteria for Award.

EXPLANATION OF PROPOSED REPEALS. The commission recently concluded its quadrennial review of Chapter 2, General Policies and Procedures, as required by Government Code, §2001.039. While the commission determined that, in general, the reasons for initially adopting the rules continue to exist, the commission identified several sections that are no longer necessary. Some of the rules proposed for repeal merely recite statutory requirements and are unnecessary as administrative rules. Other rules proposed for repeal are being folded into other existing rules as proposed amendments or new sections, which may be found in this edition of the *Texas Register.* Lastly, other sections are proposed for repeal as they detail requirements for grant programs the commission no longer administers. Furthermore, it is not necessary to adopt specific rules pertaining to individual grant programs, as the rules codified in 13 TAC Chapter 2, Subchapter C, Grant Policies, Division 1, General Grant Guidelines, are applicable to all of the commission's grant opportunities unless specified otherwise. Additional details regarding specific agency grant programs, including the goals and purposes of each opportunity, will always be provided in the Notice of Funding Opportunities published by the commission's Library Development and Networking Division for each specific grant.

The Administrative Procedure Act, Government Code, Chapter 2001, defines a rule as a state agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the procedure or practice requirements of a state agency. Gov't Code, §2001.003(6). As stated in the Administrative Law Handbook published by the Office of the Attorney General, this definition specifically excludes statements governing purely internal agency management or organization.

The commission proposes the repeal of §2.4, Principles, because it does not implement, interpret, or prescribe law or policy or describe a commission procedure or practice requirement. Furthermore, it is outdated, having last been amended almost 20 years ago.

The commission proposes the repeal of §2.10, Dual Office Holding, as this requirement is unnecessary and inappropriate in a commission rule. Dual office holding is prohibited by Texas law, based on the Texas constitutional restriction on holding two civil offices of emolument and common-law incompatibility.

The commission proposes the repeal of §2.58, Use of Technology, because it does not implement, interpret, or prescribe law or policy or describe a commission procedure or practice requirement.

The commission proposes the repeal of §2.110, Scope of Subchapter, because the commission is proposing new language for this section. Rather than amend the existing rule, the commission finds it more efficient to repeal the existing rule and propose a new rule in its place.

The commission proposes the repeal of §2.115, Awarding of Grants; §2.116, Texas Grant Management Standards; §2.117, Grant Review and Award Process; and §2.118, Decision Making Process, because the commission is reorganizing the rules within Subchapter C (Grant Policies), Division 1 (General Grant Guidelines). The general subject matter of these rules will remain in rule, but may be organized differently and with updated, streamlined language. By repealing these sections, the commission will be able to propose new sections and ensure the Division as a whole is concisely worded and flows more logically. In turn, the commission believes the commission's rules will be easier to understand and apply.

Lastly, the commission proposes the repeal of §2.210, Negotiated Grants; §2.211, Resource Sharing--Interlibrary Loan Grants; §2.212, Technical Assistance Grants; §2.213, System Integrated Negotiated Grants; §2.610, Goals and Purposes; §2.611, Eligible Applicants; §2.612, Criteria for Award; §2.810, Goals and Purposes; §2.811, Definitions; §2.812, Eligible Applicants; §2.813, Eligible Expenses; §2.814, Funding Formula; §2.815, Application Review and Awarding Process; §2.910, Goals and Purposes; §2.911, Eligible Applicants; and §2.912, Criteria for Award. The commission proposes the repeal of each of these sections because they relate specifically to grant programs the commission no longer administers. Furthermore, they are unnecessary, as the commission's general grant rules apply to all of the commission's grant programs and individual rules pertaining to specific grant programs are not necessary, unless required by statute. In this case, none of the specific grant programs described in the rules proposed for repeal are required in statute to be adopted by rule.

FISCAL NOTE. Donna Osborne, Chief Operations and Fiscal Officer, has determined that for each of the first five years the proposed repeals are in effect, there will not be a fiscal impact on state or local government.

PUBLIC BENEFIT/COST NOTE. Gloria Meraz, Director and Librarian, has determined that for the first five-year period the repeals are in effect, the public benefit will be consistency and clarity in the commission's rules related to general commission programs, services, and grants.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Ms. Meraz has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these repeals and therefore no regulatory flexibility analysis, as specified in Government Code, §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Pursuant to Government Code, §2001.0221, the commission provides the following Government Growth Impact Statement for the proposed repeals:

During the first five years that the proposed repeals would be in effect, the proposed repeals: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will repeal existing regulations; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the proposed repeal will be in effect, the proposed repeal will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed repeal may be directed to Sarah Swanson, General Counsel, via email rules@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas, 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §§2.4, 2.10, 2.54, 2.58

STATUTORY AUTHORITY. The repeals are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and §441.006, General Powers and Duties, which directs the commission to govern the state library.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.4. Principles.

§2.10. Dual Office Holding.

§2.54. Bid Procedures and HUB Program.

§2.58. Use of Technology.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER C. GRANT POLICIES
DIVISION 1. GENERAL GRANT GUIDELINES

13 TAC §§2.110, 2.115 - 2.118

STATUTORY AUTHORITY. The repeals are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.110. Scope of Subchapter.

§2.115. Awarding of Grants.

§2.116. Texas Grant Management Standards.

§2.117. Grant Review and Award Process.

§2.118. Decision Making Process.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 2. NEGOTIATED GRANTS

13 TAC §§2.210 - 2.213

STATUTORY AUTHORITY. The repeals are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.210. Negotiated Grants.

§2.211. Resource Sharing--Interlibrary Loan Grants.

§2.212. Technical Assistance Grants.

§2.213. System Integrated Negotiated Grants.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 6. LIBRARY SERVICES AND TECHNOLOGY ACT, GUIDELINES FOR LIBRARY SYSTEMS

13 TAC §§2.610 - 2.612

STATUTORY AUTHORITY. The repeals are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.610. Goals and Purposes.

§2.611. Eligible Applicants.

§2.612. Criteria for Award.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 8. LOAN STAR LIBRARIES GRANT PROGRAM, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.810 - 2.815

STATUTORY AUTHORITY. The repeals are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.810. Goals and Purposes.

§2.811. Definitions.

§2.812. Eligible Applicants.

§2.813. Eligible Expenses.

§2.814. Funding Formula.

§2.815. Application Review and Awarding Process.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 9. IMPACT GRANTS FOR LIBRARY INNOVATION AND IMPROVEMENT

13 TAC §§2.910 - 2.912

STATUTORY AUTHORITY. The repeals are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.910. Goals and Purposes.

§2.911. Eligible Applicants.

§2.912. Criteria for Award.

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CHAPTER 7. LOCAL RECORDS
SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.123

The Texas State Library and Archives Commission (commission) proposes an amendment to §7.123, General.

BACKGROUND. House Bill 1962, 86th R.S. (2019) (HB 1962) amended Government Code, §441.095, Disposition of Unscheduled Records, by repealing subsections (a), (b), and (c). HB 1962 also added Government Code, §441.169, Duties of Local Governments. Together, these amendments changed the process for the destruction of records not listed on a records retention schedule. Prior to the amendments, a custodian was required to file with the commission a notice of intent to destroy a record not listed on an approved records retention schedule at least 60 days before destroying the record. Now, under Government Code, §441.169, a local government is authorized to destroy records that do not appear on a records retention schedule issued by the commission if the local government notifies the commission at least 10 days before destroying the record. The proposed amendment to §7.123 is necessary to update the commission's general rule related to records retention schedules for local governments, which currently refers to the filing of records destruction requests with the commission.

ANALYSIS OF PROPOSED AMENDMENTS. A proposed amendment to §7.123 deletes subsection (c), which lists five circumstances when a local government may destroy records without filing a records destruction request with the commission. Because a local government is no longer required to file records destruction requests with the commission, this subsection is now obsolete.

A proposed amendment to §7.123(b) makes a correction to a reference to another commission rule.

FISCAL IMPACT. Craig Kelso, Director, State and Local Records Management, has determined that for each of the first five years the proposed amendments are in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the rule, as proposed.

PUBLIC BENEFIT AND COSTS. Mr. Kelso has determined that for each of the first five years the proposed amendments are in effect, the anticipated public benefit will be increased clarity in the commission's rules and requirements for local governments and consistency with statutory requirements. There are no anticipated economic costs to persons required to comply with the proposed amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposal has no impact on local economy; therefore, no local employment impact statement under Government Code, §2001.022 is required.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed amendments do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Government Code, §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed amendments will be in effect, the commission has determined the following:

1. The proposed amendments will not create or eliminate a government program;

2. Implementation of the proposed amendments will not require the creation of new employee positions or the elimination of existing employee positions;

3. Implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the commission;

4. The proposed amendments will not require an increase or decrease in fees paid to the commission;

5. The proposal will not create a new regulation;

6. The proposal will not expand or repeal an existing regulation;

7. The proposed amendments will not increase the number of individuals subject to the proposal's applicability; and

8. The proposed amendments will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to their property that would otherwise exist in the absence of government action. Therefore, the proposed amendment does not constitute a taking under Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted to Craig Kelso, Director, State and Local Records Management Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register.*

STATUTORY AUTHORITY. The amendments are proposed under Government Code, §441.158, which directs the commission to adopt records retention schedules for each type of local government by rule.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441 and Local Government Code, Chapters 201, 202, and 203.

§7.123. General.

(a) The following purposes of this undesignated head are to:

(1) implement the Government Code, §441.158; and

(2) provide procedures for the development of records retention schedules which ensure participation by the public, local officials, and state agencies having regulatory authority over local government recordkeeping.

(b) The records retention schedules adopted in §7.125 of this title (relating to [~~Adoption of~~] Records Retention Schedules [~~by Reference~~]) shall be considered minimum requirements and shall in no way affect the authority of the governing bodies of local governments or of elected county officials to establish longer periods of time for which records of their government or office are to be retained.

[~~(c) Local governments and elected county officers may destroy the following records without first filing records destruction requests with the director and librarian:~~]

[~~(1) any record whose retention period in a records retention schedule is AV (as long as administratively valuable);~~]

[~~(2) any record whose retention period in a records retention schedule is one year or less;~~]

[~~(3) any record whose retention period in a records retention schedule is US (until superseded), unless an additional period exceeding one year is prescribed beyond supersession;~~]

[~~(4) any record listed in Local Schedule EL, as adopted under §7.125 of this title (relating to Adoption of Records Retention Schedules by Reference), whose retention period is RP-1 (general, special, and primary elections that do not involve a federal office--60 days after election day) or RP-2 (general, special, and primary elections that do involve a federal office--22 months after election day);~~]

[~~(5) any record listed as exempt from the destruction request requirement in a records retention schedule.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Sarah Swanson
General Counsel
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5460

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CHAPTER 10. ARCHIVES AND HISTORICAL RESOURCES

13 TAC §10.4

The Texas State Library and Archives Commission (commission) proposes an amendment to 13 Texas Administrative Code §10.4, Reappraisal and Deaccessioning of Items.

BACKGROUND. Government Code, §441.190 authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records. The statute further directs the commission to pay particular attention to the maintenance and storage of archival and vital state records and authorizes the commission to adopt rules as it considers necessary to protect those records.

The commission adopted §10.4, Reappraisal and Deaccessioning of Items, in January 2023, and the new rule became effective March 6, 2023. Section 10.4(b) addresses the deaccessioning of items in the State Archives, specifically providing guidance as to when deaccessioning may be appropriate. Subsection (b)(3) provides that deaccessioning may be appropriate for items that are duplicates of other items in the State Archives. Agency archivists regularly encounter duplicates of records in the State Archives. Sometimes duplicates are found in separate state agency records series or in separate non-state agency collections. Other times, duplicates of items are found within a single records series or collection. The commission proposes an amendment to this section to enable commission staff to weed out duplicates of items in the State Archives when they are located within a single records series or collection. This amendment would enable staff to manage and process the collection more efficiently. Duplicates of items found in separate state agency records series or in separate non-state agency collections would still need to go through the formal reappraisal and deaccessioning process before they are disposed of under §10.4(d).

EXPLANATION OF PROPOSED AMENDMENT. The proposed amendment to §10.4 would add a clarifying clause to subsection (b)(3) to clarify that deaccession may be an appropriate option for items that are duplicates of other items in the State Archives if the duplicates are found within records of a separate state agency or a separate non-state agency collection.

FISCAL IMPACT. Jelain Chubb, State Archivist, has determined that for each of the first five years the proposed amendment is in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the amended rule, as proposed.

PUBLIC BENEFIT AND COSTS. Ms. Chubb has determined that for each of the first five years the proposed amendment is in effect, the anticipated public benefit will be increased clarity regarding the process for deaccessioning of items from the State Archives. In addition, by enabling the commission to weed out certain duplicates without going through the formal process in certain limited instances, the commission will be able to process archives more efficiently, enabling the commission to make progress on its archival backlog, which will ultimately make more archives available to the public. There are no anticipated economic costs to persons required to comply with the proposed amendment.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposal has no impact on local economy; therefore, no local employment impact statement under Government Code, §2001.022 is required.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed amendment does not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Gov't Code §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed amendment will be in effect, the commission has determined the following:

1. The rule as proposed for amendment will not create or eliminate a government program;

2. Implementation of the rule as proposed for amendment will not require the creation of new employee positions or the elimination of existing employee positions;

3. Implementation of the rule as proposed for amendment will not require an increase or decrease in future legislative appropriations to the commission;

4. The proposal will not require an increase or decrease in fees paid to the commission;

5. The proposal will not create a new regulation;

6. The proposal will not expand, limit, or repeal an existing regulation;

7. The proposal will not increase the number of individuals subject to the proposed rules' applicability; and

8. The proposal will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the proposed amendment does not constitute a taking under Texas Gov't Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments and new rules may be submitted to Jelain Chubb, State Archivist, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711 or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register.*

STATUTORY AUTHORITY. The amendment is proposed under Government Code, §441.190; which authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records, paying particular attention to the maintenance, storage, and protection of archival and vital state records; §441.193, which authorizes the commission to adopt rules regarding public access to the archival state records and other historical resources in the possession of the commission; and §441.186, which authorizes the state archivist to remove the designation of a state record as an

archival state record and permit destruction of the record under rules adopted under Chapter 441, Subchapter L.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441, Subchapter L, Preservation and Management of State Records and Other Historical Resources.

§10.4. Reappraisal and Deaccessioning of Items.

(a) The commission recognizes the need for periodic reevaluations and thoughtful selection necessary for the growth and proper care of collections. To maintain the integrity of the State Archives holdings, items may be reappraised by staff to determine if they still meet professional appraisal criteria and comply with the agency's acquisition policy. Items that do not meet professional appraisal criteria and are not in compliance will be considered for deaccession.

(b) Deaccession may be appropriate for items:

(1) That were never appraised or are not subject to archival review according to the creating agency's approved records retention schedule;

(2) Whose retention period has changed from permanent to nonpermanent according to the creating agency's approved records retention schedule;

(3) That are duplicates of other items in the State Archives if such duplicates are found in records of a separate state agency or in a separate non-state agency collection;

(4) That are reproductions of archival materials owned by other individuals or repositories;

(5) Whose condition has deteriorated to a point that they are unstable or endanger staff or other items;

(6) The agency cannot properly access or store;

(7) That are permanently closed, in whole or in part, by the creating agency;

(8) That do not meet the requirements of the agency's current acquisition policy; or

(9) Approved on a case-by-case basis for deaccession for other reasons not listed above.

(c) Items may only be deaccessioned if a majority of the Deaccession Workgroup votes to recommend deaccession and the state archivist approves. The state archivist will notify the director and librarian prior to final approval of deaccessioning of items.

(d) The agency will determine the appropriate method by which to dispose of a deaccessioned item, which may include, but is not limited to the following:

(1) Items may be transferred to a repository with an appropriate collecting scope;

(2) Items that are state records will be destroyed by the agency;

(3) For any other non-government records, the agency will make a reasonable effort to locate the original donor to return the deaccessioned item, unless the donor claimed a charitable donation tax deduction. To return a donated item to the original donor:

(A) Donor(s) must sign a written acknowledgment attesting to the fact that a tax deduction was not claimed;

(B) If the donor is deceased, any claimant requesting return in lieu of the donor must present a notarized statement that he/she is either the sole party at interest or authorized to represent all parties at interest, along with providing supporting proof; and

(C) If the original donor cannot be located, these items may be offered to another repository or destroyed;

(4) Any item whose condition could endanger individuals or other items will be destroyed; and

(5) The sale of any deaccessioned materials will be approved by the Commission and the funds will be used to preserve state archival records and other historical resources and to make the records and resources available for research.

(e) If an item or collection of items approved for deaccession has been logged in the accession log as "on loan" to the agency or has unknown provenance, staff will follow the procedures in Property Code, Chapter 80 (relating to Ownership, Conservation, and Disposition of Property Loaned to Museum) regarding ultimate disposition of the item or items.

(f) Upon deaccession, the agency relinquishes title to the object or collection, except in the case of theft or loss. If deaccessioning is due to theft or loss, the agency will retain title to the item for the state in case it is ever recovered.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 151. GENERAL ADMINISTRATION

22 TAC §§151.1 - 151.7

The Texas Appraiser Licensing and Certification Board (TALCB) proposes new 22 TAC §151.1, Definitions; §151.2, Charges for Copies of Public Information; §151.3, Employee Training and Education; §151.4, Historically Underutilized Businesses Program; §151.5, Bid Opening and Tabulation; §151.6, Negotiation and Mediation of Certain Contract Disputes; and §151.7, Vendor Protest Procedures.

The proposed new rules create a General Administration Chapter for rules of general applicability to TALCB's administration. The changes create a new definitions section in §151.1 for ease of reading and terminology consistent with terms utilized by both the Texas Real Estate Commission and TALCB. In §151.2, the proposed rule outlines TALCB's approach to fees related to the production of documents in response to public information requests. In §151.3, the new rule addresses the Board's payment of education and training for TALCB employees. Finally, in §151.4, Historically Underutilized Businesses Program; §151.5,

Bid Opening and Tabulation; §151.6, Negotiation and Mediation of Certain Contract Disputes; and §151.7, Vendor Protest Procedures, the new rules relate TALCB's contracting and procurement processes.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed rules are in effect the public benefits anticipated as a result of enforcing the proposed rules will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed rules are in effect the rules will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

--expand, limit or repeal an existing regulation; and

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed rules are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed rules may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rules are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB; §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board; §1103.154, which authorizes TALCB to adopt rules relating to professional conduct; and §1103.156 which authorizes TALCB to establish reasonable fees to administer Chapter 1103, Texas Occupations Code; and Texas Occupations Code §1104.151, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statutes affected by these new rules are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§151.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--The Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board.

(2) Board--The Texas Appraiser Licensing and Certification Board.

(3) Chief Financial Officer--The Chief Financial Officer of the Texas Real Estate Commission.

(4) Commission--The Texas Real Estate Commission.

(5) Comptroller--The Comptroller of Public Accounts.

(6) DIR--The Department of Information Resources.

(7) Executive Director--The Executive Director of the Commission and the Board.

(8) TAC--The Texas Administrative Code.

(9) TFC--The Texas Facilities Commission.

§151.2. Charges for Copies of Public Information.

The Board adopts by reference the rules promulgated by the Commission regarding Charges for Copies of Public Information as set forth in 22 TAC §534.2.

§151.3. Employee Training and Education.

(a) The Board may provide training and education for its employees in accordance with Subchapter C, Chapter 656, Texas Government Code.

(b) The Board may spend public funds as appropriate to pay the costs associated with employee training, including, but not limited to, salary, tuition and other fees, travel, and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.

(c) The Executive Director shall adopt policies related to training for Board employees, including eligibility and obligations assumed upon completion.

(d) Before an employee may receive reimbursement of tuition expenses for successful completion of a training or education program offered by an accredited institution of higher education, the Executive Director must pre-approve the program and authorize the tuition reimbursement payment.

(e) Approval to participate in any portion of the Board's training and education program does not affect an employee's at-will status.

(f) Participation in the training and education program does not constitute a guarantee or indication of continued employment, nor does it constitute a guarantee or indication of future employment in a current or prospective position.

§151.4. Historically Underutilized Businesses Program.

To comply with Texas Government Code §2161.003, the Board adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter D, Division 1 (relating to the Historically Underutilized Businesses).

§151.5. Bid Opening and Tabulation.

To comply with Texas Government Code, §2156.005(d), the Board adopts by reference the rules of the Texas Comptroller of Public Accounts in 34 TAC §20.207 (relating to Competitive Sealed Bidding).

§151.6. Negotiation and Mediation of Certain Contract Disputes.

To comply with Texas Government Code, §2260.052(c), the Board adopts by reference the rules of the Office of the Attorney General in 1 TAC Part 3, Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes). The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of the contract's complexity, subject matter, dollar amount, or method and time of performance.

§151.7. Vendor Protest Procedures.

The Board adopts by reference the rules promulgated by the Commission regarding Vendor Protest Procedures as set forth in 22 TAC §534.7.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kathleen Santos
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CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.12, §153.16

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.12, Criminal History Checks and §153.16, License Reinstatement.

The proposed amendments to §153.12 accurately reflect the process of criminal history checks. The proposed amendments to §153.16 refine the requirements related to the reinstatement of an expired license. Specifically, the amendments remove reexamination as a requirement for reinstatement, clarify that the requirement are consistent with that of the Appraisal Qualifications Board, and specify the circumstances when an applicant must demonstrate experience in compliance with USPAP.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

--expand, limit or repeal an existing regulation; and

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB; §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board; and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.12. Criminal History Checks.

(a) An applicant or license holder applying for or renewing a license issued by the Board must submit a complete and legible set of fingerprints, in a manner approved by the Board, to the Board, the Texas Real Estate Commission, the Texas Department of Public Safety, or other authorized entity for the purpose of obtaining criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation.

(b) The Board will conduct a criminal history check of each applicant for a license or renewal of a license.

~~[(c) If an applicant or license holder has previously submitted fingerprints on behalf of the Board or Commission as provided in (a), no additional fingerprints are required.]~~

§153.16. License Reinstatement.

(a) This section applies only to a person who:

(1) previously held a residential appraiser license or certification or general appraiser certification [~~an appraiser license~~] issued by the Board that has been expired for more than six months; and

(2) seeks to obtain the same level of appraiser license previously held by the person before its expiration.

(b) A person who seeks to reinstate a license expired less than five years must [~~described in subsection (a) may apply to reinstate the person's former license by~~]:

(1) submit [~~submitting~~] an application for reinstatement on a form approved by the Board;

(2) pay [~~paying~~] the required fee;

(3) satisfy [~~satisfying~~] the Board as to the person's honesty, trustworthiness and integrity;

[~~(4) satisfying the experience requirements in this section; and~~]

(4) [~~(5)~~] satisfy [~~satisfying~~] the fingerprint and criminal history check requirements in §153.12 of this title; and[~~.~~]

(5) complete all AQB continuing education requirements that would have been required had the license not expired.

(c) A person who seeks to reinstate a license expired five years or more must:

(1) satisfy the requirements of subsection (b); and

(2) submit an experience log demonstrating his or her experience complies with USPAP, as outlined in subsection (d).

(d) An experience log submitted under subsection (c) must include at least 10 appraisals of a property type accepted by the AQB for the applicable license category, completed within 5 years from the date of application under this section.

(e) Unless otherwise provided in this section, the board will verify and award experience submitted under subsection (d) in accordance with §153.15 of this title (relating to Experience Required for Licensing).

(f) If a person who seeks to reinstate a license under subsection (c) is unable to submit appraisals or supporting documentation for verification, he or she may apply for a license as an appraiser trainee for the purposes of acquiring the appraisal experience required for reinstatement.

[~~(c) Applicants for reinstatement under this section must demonstrate completion of 14 hours of appraiser continuing education for each year since the last renewal of the person's previous license.~~]

[~~(d) Applicants for reinstatement must demonstrate that their appraisal experience complies with USPAP as follows:~~]

[~~(1) Persons who have work files and license expired less than 5 years. A person described in subsection (a) of this section who has appraisal work files and whose previous license has been expired less than five years may apply to reinstate the person's previous license by submitting an experience log as follows:~~]

[~~(A) For reinstatement as a licensed residential appraiser or a certified residential appraiser, a minimum of 10 residential appraisal reports representing at least 10 percent of the hours and property type of experience required by the AQB for the applicable license category.~~]

[~~(B) For reinstatement as a certified general appraiser, a minimum of 10 non-residential appraisal reports representing at least 10 percent of the total hours of experience required by the AQB for this license category.~~]

[~~(2) Persons who do not have work files or license expired more than 5 years.~~]

[~~(A) A person described in subsection (a) who does not have appraisal work files or whose previous license has been expired for more than five years may apply for a license as an appraiser trainee for the purpose of acquiring the appraisal experience required under this subsection.~~]

[~~(B) An appraiser trainee licensed under this section may apply for reinstatement at the same level of appraiser license that the applicant previously held, after the applicant completes the required number of appraisal reports or hours of real estate appraisal experience as follows:~~]

[~~(i)~~ ~~For reinstatement as a licensed residential appraiser or certified residential appraiser, the applicant must complete a minimum of 10 residential appraisal reports representing at least 10 percent of the experience hours required by the AQB for the applicable license category.~~]

[~~(ii)~~ ~~For reinstatement as a certified general appraiser, the applicant must complete a minimum of 10 non-residential appraisal reports representing at least 10 percent of the total hours of experience required by the AQB for this license category.~~]

[~~(C) Upon completion of the required number of appraisal reports or hours of real estate appraisal experience, the applicant must submit an experience log.~~]

[~~(D) If an appraiser trainee seeking reinstatement under this section is supervised by a supervisory appraiser with more than three appraiser trainees, those trainees seeking reinstatement under this section satisfy the required progress monitoring through completion of the experience audit under subsection (e) of this section and need not complete the voluntary appraiser trainee experience reviews under §153.22 of this title.~~]

[~~(e) Consistent with §153.15 of this title, the Board will evaluate each applicant's real estate appraisal experience for compliance with USPAP based on the submitted experience log.~~]

[~~(f) For those persons described in subsection (a) of this section the Board has discretion to waive the following requirements:~~]

[~~(1) Proof of qualifying education;~~]

[~~(2) College education or degree requirement; or~~]

[~~(3) Examination for persons whose appraiser license has been expired for less than five years.~~]

[~~(g) Consistent with this chapter, upon review of the applicant's real estate appraisal experience, the Board may:~~]

[~~(1) Reinstate the applicant's previous appraiser license;~~]

[~~(2) Reinstate the applicant's previous appraiser license, contingent upon completion of additional education, experience or mentorship; or~~]

[~~(3) Deny the application.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §159.110

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §159.110, AMC National Registry.

The proposed amendments allow for greater flexibility in addressing AMCs that fail to pay the AMC registry fee.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

--expand, limit or repeal an existing regulation; and

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1104.151, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.110. AMC National Registry.

(a) For purposes of this rule, the term "AMC" includes each AMC registered with the Board under Chapter 1104, Occupations Code, including AMCs with an active or inactive license status, and each federally regulated AMC operating in this state.

(b) An AMC must provide information to the Board and pay the required AMC Registry Fee on an annual basis.

(c) The Board will send notice to each AMC regarding payment of AMC Registry Fees on or before November 1st of each calendar year.

(d) On or after January 1st and before March 31st of the calendar year following the issuance of notice under subsection (c), each AMC must:

(1) Submit the information required to determine the applicable AMC Registry Fee; and

(2) Pay the applicable AMC Registry Fee.

(e) The Board will transmit the information collected from each AMC to the Appraisal Subcommittee for inclusion on the AMC National Registry as required by federal law.

(f) Failure to receive notice from the Board regarding annual payment of AMC Registry Fees does not relieve an AMC from submitting the required information and paying the applicable AMC Registry Fee in a timely manner as required in this section.

(g) Failure to submit the required information and pay the applicable AMC Registry Fee in a timely manner as required in this section is a violation of this rule that may result in one or more of the following:

(1) Assessment of a late fee; [~~and~~]

(2) Placement on inactive status; and

(3) [~~(2)~~] Disciplinary action, up to and including license revocation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY
SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.52 concerning Recognized Institutions of Higher Education.

Background, Justification and Summary

There are business entities and other organizations that offer courses which do not meet the minimum standards to be approved by the board to sit for the Uniform CPA Exam. The proposed rule revision identifies a specific entity that offers courses that are not approved by the board.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will allow the public and applicants to take the Uniform CPA Exam to know in advance specific course offerings that cannot be used to qualify to sit for the Uniform CPA Exam.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.52. Recognized Institutions of Higher Education.

(a) The board recognizes institutions of higher education that offer a baccalaureate or higher degree, that either:

(1) are accredited by one of the following organizations:

(A) Middle States Commission on Higher Education (MSCHE);

(B) Northwest Commission on Colleges and Universities (NWCCU);

(C) Higher Learning Commission (HLC);

(D) New England Commission of Higher Education (NECHE);

(E) Southern Association of Colleges and Schools, Commission on Colleges (SACS); and

(F) WASC Senior College and University Commission; or

(2) provide evidence of meeting equivalent accreditation requirements of SACS.

(b) The board is the final authority regarding the evaluation of an applicant's education and has received assistance from the reporting

institution in the State of Texas, the University of Texas at Austin, in evaluating:

(1) an institution of higher education;

(2) organizations that award credits for coursework taken outside of a traditional academic environment and shown on a transcript from an institution of higher education;

(3) assessment methods such as credit by examination, challenge exams, and portfolio assessment; and

(4) non-college education and training.

(c) The following organizations and assessment methods may not be used to meet the requirements of this chapter:

(1) American Council on Education (ACE);

(2) Prior Learning Assessment (PLA);

(3) Defense Activity for Non-Traditional Education Support (DANTES); [~~and~~]

(4) Defense Subject Standardized Test (DSST); and [~~.~~]

(5) Straighterline.

(d) The board may accept courses completed through an extension school, a correspondence school or continuing education program provided that the courses are offered and accepted by the board approved educational institution for a business baccalaureate or higher degree conferred by that educational institution.

(e) Except as provided in subsection (d) of this section, extension and correspondence schools or programs and continuing education courses do not meet the criteria for recognized institutions of higher education.

(f) The requirements related to recognized community colleges are provided in §511.54 of this chapter (relating to Recognized Texas Community Colleges).

(g) The board may recognize a community college that offers a baccalaureate degree in accounting or business, provided that the applicant is admitted to a graduate program in accounting or business offered at a recognized institution of higher education that offers a graduate or higher degree.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy
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22 TAC §511.53

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.53 concerning Evaluation of International Education Documents.

Background, Justification and Summary

There are business entities and other organizations that offer courses which do not meet the minimum standards to be approved by the board to sit for the Uniform CPA Exam. The proposed rule revision identifies a specific entity that offers courses that have been evaluated and determined to not meet minimum standards to be used as credit to sit for the Uniform CPA Exam.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will allow the public and applicants to take the Uniform CPA Exam to know in advance specific course offerings that cannot be used to qualify to sit for the Uniform CPA Exam.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his

attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.53. Evaluation of International Education Documents.

(a) It is the responsibility of the board to confirm that education obtained at colleges and universities outside of the United States (international education) is equivalent to education earned at board-recognized institutions of higher education in the U.S.

(b) The board shall use, at the expense of the applicant, the services of the University of Texas at Austin, Graduate and International Admissions Center, to validate, review, and evaluate international education documents submitted by an applicant to determine if the courses taken and degrees earned are substantially equivalent to those offered by the board-recognized institutions of higher education located in the U.S. The evaluation shall provide the following information to the board:

(1) Degrees earned by the applicant that are substantially equivalent to those conferred by a board-recognized institution of higher education in the U.S. that meets §511.52 of this chapter (relating to Recognized Institutions of Higher Education);

(2) The total number of semester hours or quarter hour equivalents earned that are substantially equivalent to those earned at U.S. institutions of higher education and that meet §511.59 of this chapter (relating to Definition of 120 Semester Hours to take the UCPAE);

(3) The total number of semester hours or quarter hour equivalents earned in accounting coursework that meets §511.57 of this chapter (relating to Qualified Accounting Courses to take the UCPAE) or §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE);

(4) An analysis of the title and content of courses taken that are substantially equivalent to courses listed in §511.57 or §511.60 of this chapter; and

(5) The total number of semester hours or quarter hour equivalents earned in business coursework that meets §511.58 of this chapter (relating to Definitions of Related Business Subjects to take the UCPAE).

(c) The University of Texas at Austin, Graduate and International Admissions Center, may use the American Association of Collegiate Registrars and Admissions Officers (AACRAO) material, including the Electronic Database for Global Education (EDGE), in evaluating international education documents.

(d) Other evaluation or credentialing services of international education are not accepted by the board.

(e) Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

(1) American College Education (ACE);

(2) Prior Learning Assessment (PLA);

(3) Defense Activity for Non-Traditional Education Support (DANTES); [~~and~~]

(4) Defense Subject Standardized Test (DSST); and [~~.~~]

(5) Straighterline.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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J. Randel (Jerry) Hill
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22 TAC §511.58

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.58 concerning Definitions of Related Business Subjects to take the UCPAE.

Background, Justification and Summary

The revision proposes to identify course work from an organization that the board will not accept for purposes of qualifying to take the Uniform CPA Exam.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will put the public on notice that course work from an identified business entity will not be accepted for purposes of qualifying to take the Uniform CPA Exam.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with

the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.58. Definitions of Related Business Subjects to take the UCPAE.

(a) Related business courses are those business courses that a board recognized institution of higher education accepts for a business baccalaureate or higher degree by that educational institution.

(b) An individual who holds a baccalaureate or higher degree from a recognized educational institution as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) may take related business courses from four-year degree granting institutions, or recognized community colleges, provided that all such institutions are recognized by the board as defined by §511.52 or §511.54 of this chapter (relating to Recognized Texas Community Colleges). Related business courses taken at a recognized community college are only the courses that the board has reviewed and approved to meet this section.

(c) The board will accept no fewer than 24 semester credit hours of upper level courses (for the purposes of this subsection, economics and statistics at any college level will count as upper division courses) as related business subjects (without repeat), taken at a recognized educational institution shown on official transcripts or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, in the following areas.

(1) No more than 6 credit semester hours taken in any of the following subject areas may be used to meet the minimum hour requirement:

(A) business law, including study of the Uniform Commercial Code;

(B) economics;

(C) management;

(D) marketing;

(E) business communications;

(F) statistics and quantitative methods;

(G) information systems or technology; and

(H) other areas related to accounting.

(2) No more than 9 credit semester hours taken in any of the following subject areas may be used to meet the minimum hour requirement:

(A) finance and financial planning; and

(B) data analytics, data interrogation techniques, cyber security and/or digital acumen in the accounting context, whether taken in the business school or in another college or university program, such as the engineering, computer science, information systems, or math programs (while data analytic tools may be used in the course, application of the tools should be the primary objective of the course).

(d) The board requires that a minimum of 2 upper level semester credit hours in accounting communications or business communications with an intensive writing curriculum be completed. The semester hours may be obtained through a standalone course or offered through an integrated approach. If the course content is offered through integration, the university must advise the board of the course(s) that contain the accounting communications or business communications content. The course may be used toward the 24 semester credit hours of upper level business courses listed in subsection (c)(1) of this section.

(e) Credit for hours taken at recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

(f) Related business courses completed through and offered by an extension school, correspondence school, or continuing education program of a board recognized educational institution may be accepted by the board, provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

(g) The board may review the content of business courses and determine if they meet the requirements of this section.

(h) Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

(1) American College Education (ACE);

(2) Prior Learning Assessment (PLA);

(3) Defense Activity for Non-Traditional Education Support (DANTES); [~~and~~]

(4) Defense Subject Standardized Test (DSST); and[~~.~~]

(5) Straighterline.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 9, 2023.

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J. Randel (Jerry) Hill
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22 TAC §511.59

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.59 concerning Definition of 120 Semester Hours to take the UCPAE.

Background, Justification and Summary

The revision proposes to identify course work from an organization that the board will not accept for purposes of qualifying to take the Uniform CPA Exam.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will put the public on notice that course work from an identified business entity will not be accepted for purposes of qualifying to take the Uniform CPA Exam.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.59. Definition of 120 Semester Hours to take the UCPAE.

(a) To be eligible to take the UCPAE, an applicant must hold at a minimum a baccalaureate degree, conferred by a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education), and have completed the board-recognized coursework identified in this section:

(1) no fewer than 21 semester hours or quarter-hour equivalents of upper level accounting courses as defined by §511.57 of this chapter (relating to Qualified Accounting Courses) or §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE);

(2) no fewer than 24 semester hours or quarter-hour equivalents of upper level related business courses, as defined by §511.58 of this chapter (relating to Definitions of Related Business Subjects to take the UCPAE); and

(3) academic coursework at an institution of higher education as defined by §511.52 of this chapter, when combined with paragraphs (1) and (2) of this subsection meets or exceeds 120 semester hours.

(b) An individual holding a baccalaureate degree conferred by a board-recognized institution of higher education, as defined by §511.52 of this chapter, and who has not completed the requirements of this section shall meet the requirements by taking coursework in one of the following ways:

(1) complete upper level or graduate courses at a board recognized institution of higher education as defined in §511.52 of this chapter that meets the requirements of subsection (a)(1) and (2) of this section; or

(2) enroll in a board recognized community college as defined in §511.54 of this chapter (relating to Recognized Texas Community Colleges) and complete board approved accounting or business courses that meet the requirements of subsection (a)(1) and (2) of this section. Only specified accounting and business courses that are approved by the board will be accepted as not all courses offered at a community college are accepted.

(c) The following courses, courses of study, certificates, and programs may not be used to meet the 120-semester hour requirement:

(1) any CPA review course offered by an institution of higher education or a proprietary organization;

(2) remedial or developmental courses offered at an educational institution; and

(3) credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

(A) American College Education (ACE);

(B) Prior Learning Assessment (PLA);

(C) Defense Activity for Non-Traditional Education Support (DANTES); [~~and~~]

(D) Defense Subject Standardized Test (DSST); and [~~.~~]

(E) Straighterline.

(d) The hours from a course that has been repeated will be counted only once toward the required 120 semester hours.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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22 TAC §511.60

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.60 concerning Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE.

Background, Justification and Summary

The revision proposes to identify course work from an organization that the board will not accept for purposes of qualifying to take the Uniform CPA Exam.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will put the public on notice that course work from an identified business entity will not be accepted for purposes of qualifying to take the Uniform CPA Exam.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.60. Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE.

(a) An applicant shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) and present valid transcript(s) from board-recognized institution(s) that show degree credit for no fewer than 21 semester credit hours of upper division accounting courses as defined in subsection (e) of this section; or

(2) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this chapter, and after obtaining the degree, complete the requisite 21 semester credit hours of upper division accounting courses, as defined in subsection (e) of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board as defined by §511.52 of this chapter, and that the accounting programs offered at the community colleges are reviewed and accepted by the board.

(b) Credit for hours taken at board-recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester credit hour for each hour of credit received under the quarter system.

(c) The board will accept no fewer than 21 semester credit hours of accounting courses from the courses listed in subsection (e)(1) - (14) of this section. The hours from a course that has been repeated will be counted only once toward the required 21 semester hours. The courses must meet the board's standards by containing sufficient business knowledge and application to be useful to candidates taking the UCPAE. A board-recognized institution of higher education must have accepted the courses for purposes of obtaining a baccalaureate degree or its equivalent, and they must be shown on an official transcript.

(d) A non-traditionally-delivered course meeting the requirements of this section must have been reviewed and approved through a formal, institutional faculty review process that evaluates the course and its learning outcomes and determines that the course does, in fact, have equivalent learning outcomes to an equivalent, traditionally delivered course.

(e) The subject-matter content should be derived from the UCPAE Blueprints and cover some or all of the following:

(1) financial accounting and reporting for business organizations that may include:

(A) up to nine semester credit hours of intermediate accounting;

(B) advanced accounting; or

(C) accounting theory;

(2) managerial or cost accounting (excluding introductory level courses);

(3) auditing and attestation services;

(4) internal accounting control and risk assessment;

(5) financial statement analysis;

(6) accounting research and analysis;

(7) up to 12 semester credit hours of taxation (including tax research and analysis);

(8) financial accounting and reporting for governmental and/or other nonprofit entities;

(9) up to 12 semester credit hours of accounting information systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;

(10) up to 12 semester credit hours of accounting data analytics, provided the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting (while data analytics tools may be taught in the courses, application of the tools should be the primary objective of the courses);

(11) fraud examination;

(12) international accounting and financial reporting;

(13) at its discretion, the board may accept up to three semester credit hours of accounting course work with substantial merit in the context of a career in public accounting, provided the course work is predominantly accounting or auditing in nature but not included in paragraphs (1) - (12) of this subsection (for any course

submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing the course's merit and content); and

(14) at its discretion, the board may accept up to three semester credit hours of independent study in accounting selected or designed by the student under faculty supervision (the curriculum for the course shall not repeat the curriculum of another accounting course that the student has completed).

(f) The board requires that a minimum of two semester credit hours in research and analysis relevant to the course content described in subsection (e)(6) or (7) of this section be completed. The semester credit hours may be obtained through a discrete course or offered through an integrated approach. If the course content is offered through integration, the institution of higher education must advise the board of the course(s) that contain the research and analysis content.

(g) The following types of introductory courses do not meet the accounting course definition in subsection (e) of this section:

(1) elementary accounting;

(2) principles of accounting;

(3) financial and managerial accounting;

(4) introductory accounting courses; and

(5) accounting software courses.

(h) Any CPA review course offered by an institution of higher education or a proprietary organization shall not be used to meet the accounting course definition.

(i) CPE courses shall not be used to meet the accounting course definition.

(j) Accounting courses completed through an extension school of a board recognized educational institution may be accepted by the board provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

(k) Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

(1) American College Education (ACE);

(2) Prior Learning Assessment (PLA);

(3) Defense Activity for Non-Traditional Education Support (DANTES); [~~and~~]

(4) Defense Subject Standardized Test (DSST); and [~~.~~]

(5) Straighterline.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER D. CPA EXAMINATION

22 TAC §511.80

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.80 concerning Granting of Credit.

Background, Justification and Summary

Events occur beyond the control of individuals attempting to become licensed CPAs which interfere with the individual's ability to take or pass the uniform CPA exam. The proposed rule revision would recognize unavoidable and unforeseeable events that create hardships to individuals deserving of a fair opportunity to become CPAs.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will provide a fair opportunity for qualified individuals to become licensed as a CPA.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.80. Granting of Credit.

(a) The board shall grant credit to an applicant for the satisfactory completion of a section of the UCPAE provided the applicant earns a passing score on the section as determined by board rule. The credit shall be valid for 30 months from the actual date of notification of passing score results. The 30 months may be temporarily extended by the executive director, in accordance with §901.307(b) of the Act (relating to Grading Examination), in order to provide for uniformity with other state regulatory authorities or for reasonably unforeseeable or uncontrollable events.

(b) An applicant must pass the remaining sections within the next 30 months. Should an applicant's exam credit be invalidated due to the expiration of 30 months without earning credit on the remaining sections, the applicant remains qualified to take the examination.

(c) An applicant receiving and retaining credit for every section on the UCPAE, within a 30-month period, shall be considered by the board to have completed the examination and may make application for certification as a CPA.

(d) Effective January 1, 2024, an applicant under this section shall have 36 months from the time all test sections are passed to meet the education requirements of §511.164 of this chapter (relating to Definition of 150 Semester Hours to Qualify for Issuance of a Certificate) or the credit for all test sections will expire.

(e) Effective January 1, 2024, an applicant who has an active credit on a section of the UCPAE shall have earned credit on the newly structured UCPAE as follows:

(1) credit on auditing and attestation (AUD) shall transition to auditing and attestation (AUD);

(2) credit on financial accounting and reporting (FAR) shall transition to financial accounting and reporting (FAR);

(3) credit on regulation (REG) shall transition to taxation and regulation (REG); and

(4) credit on business environment and concepts (BEC) shall not transition to a specific discipline as there is not an equivalent section, however, credit will be retained in lieu of a discipline.

(f) Effective January 1, 2024, the Board shall grant credit to an applicant for the satisfactory completion of the following sections of the UCPAE provided the applicant earns a passing score on the section as determined by board rule. The credit shall be valid for 30 months from the actual date of notification of passing score results:

(1) auditing and attestation (AUD);

(2) financial accounting and reporting (FAR);

(3) taxation and regulation (REG); and

(4) one of the following discipline sections:

(A) business analysis and reporting (BAR);

(B) information systems and controls (ISC); or

(C) tax compliance and planning (TCP).

(g) An applicant who has received and retained credit for any or all sections on the UCPAE may transfer such credits to another licensing jurisdiction if the applicant pays in advance a transfer fee set by board rule as identified in §521.7 of this title (relating to Fee for Transfer of Credits).

(h) If the UCPAE is restructured by the AICPA, the board shall determine the manner in which active credit earned prior to the restructure for a subject is integrated into the new UCPAE.

(i) Credits earned between January 1, 2020 and January 1, 2024 that are no longer valid may be considered for reinstatement for not more than 18 months from the date that reinstatement occurs. The following conditions are required:

(1) the applicant was impacted by an unforeseeable and uncontrollable event; and

(2) the applicant provides documentation to substantiate the unforeseeable and uncontrollable event.

(j) [~~(i)~~] Interpretive Comment: For the purpose of this section unforeseeable and uncontrollable events include, but are not limited to, the health of the applicant, accidents limiting the applicant, military service, natural disasters, or acts of God.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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22 TAC §511.87

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.87 concerning Loss of Credit.

Background, Justification and Summary

Events occur beyond the control of individuals attempting to become licensed CPAs which interfere with the individual's ability to take or pass the uniform CPA exam. The proposed rule revision would recognize unavoidable and unforeseeable events that create hardships to individuals deserving of a fair opportunity to become CPAs.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will provide a fair opportunity for qualified individuals to become licensed as a CPA.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.87. Loss of Credit.

(a) An applicant having earned credit under this Act or a prior Act and who has two testing quarters remaining before the expiration of credits earned shall be notified prior to each UCPAE of these facts.

(b) An applicant failing to receive credit for all sections within the time limitation of this Act shall be notified that credits have expired.

(c) The expiration of credits shall not hinder an applicant from reapplying for the examination.

(d) Credits earned between January 1, 2020 and January 1, 2024 that are no longer valid may be considered for reinstatement for not more than 18 months from the date that reinstatement occurs. The following conditions are required:

(1) the applicant was impacted by an unforeseeable and uncontrollable extreme hardship event; and

(2) the applicant provides documentation to substantiate the unforeseeable and uncontrollable event.

(e) An extreme hardship event that limits the applicant is defined as:

(1) a serious illness of an applicant or member of the immediate family, which includes a spouse, child, sibling or parent;

(2) death of an immediate family member;

(3) accidents that impacts the applicant;

(4) military service of the applicant; or

(5) natural disasters that impacts the applicant.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER H. CERTIFICATION

22 TAC §511.164

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.164 concerning Definition of 150 Semester Hours to Qualify for Issuance of a Certificate.

Background, Justification and Summary

The revision proposes to require at least two hours of course work in research and analysis in order to be certified as a CPA. This is an existing provision that has been relocated to this rule to make it a requirement for certification and not to sit for the exam at 120 hours.

The revision also proposes to identify coursework completed at an identified business entity that may not qualify an applicant seeking to sit for the CPA exam.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will make it clear that a two-hour course work in research and analysis is required prior to certification but not to sit for the Uniform CPA exam.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.164. Definition of 150 Semester Hours to Qualify for Issuance of a Certificate.

(a) To qualify for the issuance of a CPA certificate, an applicant must hold at a minimum a baccalaureate degree, conferred by a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education), and have completed the board-recognized coursework identified in this section:

(1) no fewer than 27 semester hours or quarter-hour equivalents of upper level accounting courses as defined by §511.57 of this chapter (relating to Qualified Accounting Courses to take the UCPAE) or §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE) to include a minimum of two semester credit hours in research and analysis;

(2) no fewer than 24 semester hours or quarter-hour equivalents of upper level related business courses, as defined by §511.58 of this chapter (relating to Definitions of Related Business Subjects to take the UCPAE);

(3) a three semester hour board-approved standalone course in accounting or business ethics. The course must be taken at a recognized educational institution and should provide students with

a framework of ethical reasoning, professional values, and attitudes for exercising professional skepticism and other behavior in the best interest of the public and profession. The ethics course shall:

(A) include the ethics rules of the AICPA, the SEC, and the board;

(B) provide a foundation for ethical reasoning, including the core values of integrity, objectivity, and independence; and

(C) be taught by an instructor who has not been disciplined by the board for a violation of the board's rules of professional conduct, unless that violation has been waived by the board; and

(4) academic coursework at an institution of higher education as defined by §511.52 of this chapter, when combined with paragraphs (1) - (3) of this subsection meets or exceeds 150 semester hours, of which 120 semester hours meets the education requirements defined by §511.59 of this chapter (relating to Definition of 120 Semester Hours to take the UCPAE). An applicant who has met paragraphs (1) - (3) of this subsection may use a maximum of 9 total semester credit hours of undergraduate or graduate independent study and/or internships as defined in §511.51(b)(4) or §511.51(b)(5) of this chapter (relating to Educational Definitions) to meet this paragraph. The courses shall consist of:

(A) a maximum of three semester credit hours of independent study courses; and

(B) a maximum of six semester credit hours of accounting/business course internships.

(b) The following courses, courses of study, certificates, and programs may not be used to meet the 150 semester hour requirement:

(1) any CPA review course offered by an institution of higher education or a proprietary organization;

(2) remedial or developmental courses offered at an educational institution; and

(3) credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirement of this chapter:

(A) American College Education (ACE);

(B) Prior Learning Assessment (PLA);

(C) Defense Activity for Non-Traditional Education Support (DANTES); [~~and~~]

(D) Defense Subject Standardized Test (DSST); and [~~.~~]

(E) Straighterline.

(c) The hours from a course that has been repeated will be counted only once toward the required semester hours.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 515. LICENSES

22 TAC §515.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.5 concerning Reinstatement of a Certificate or License in the Absence of a Violation of the Board's Rules of Professional Conduct.

Background, Justification and Summary

The revision proposes to recognize the relocation of the rule providing accommodations to military service members, spouses and veterans to a new chapter and to implement the provisions of Texas Occupation Code § 55.004 and § 55.0041.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will make it easier for the public to locate the rules on accommodating military service members, military spouses and military veterans.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.5. Reinstatement of a Certificate or License in the Absence of a Violation of the Board's Rules of Professional Conduct.

(a) An individual whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1 1/2 times the normally required renewal fee.

(b) An individual whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(c) An individual whose license has been expired for at least one year but less than two years may renew the license by paying to the board a renewal fee that is equal to three times the normally required renewal fee.

(d) An individual whose license has been expired for two years or more may obtain a license by paying all renewal fees including late fees.

(e) An individual whose license has been suspended or certificate revoked for the voluntary non-payment of the annual license fees, the voluntary non-completion of the annual license renewal, or the voluntary non-completion of the board required CPE may be administratively reinstated by complying with the board's CPE requirements pursuant to Chapter 523 of this title (relating to Continuing Professional Education) and providing the board the individual's required fingerprints if not previously submitted; and

(1) by paying all renewal fees including late fees; or

(2) upon showing of good cause, entering into an Agreed Consent Order that reinstates the certificate and permits the issuance of a conditional license with the agreement to pay all required fees by a certain date.

(f) An individual who was revoked under §901.502(3) or (4) of the Act (relating to Grounds for Disciplinary Action), has moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of submitting a complete application may obtain a new license without reexamination by:

(1) providing the board with a complete application including evidence of the required licensure;

(2) demonstrating that the out of state license is no more than 90 days beyond the normal expiration date of the license;

(3) paying the board a fee that is equal to two times the normally required renewal fee for the license; and

(4) meeting the other requirements for licensing.

(g) If the certificate, license, or registration was suspended, or revoked for non-payment of annual license fees, failure to complete the annual license renewal, or failure to comply with §501.94 of this title (relating to Mandatory Continuing Professional Education), upon written application the executive director will decide on an individual basis whether the renewal fees including late fees must be paid for those years and whether any fee exemption is applicable.

(h) A military service member, military veteran or military spouse may obtain a license in accordance with the provisions of Chapter 516 of this title (relating to Military Service Members, Spouses and Veterans) [~~§515.11 of this chapter (relating to Licensing for Military Service Members, Military Veterans, and Military Spouses)~~].

(i) Interpretive Comment: Effective September 1, 2015, when calculating the renewal fee provided for in subsections (a) - (d) of this section, the professional fee that was required by §901.406 and §901.407 of the Act (relating to Fee Increase and Additional Fee) will no longer be included in the renewal fee. However, when calculating any renewal fees accrued prior to September 1, 2015, the professional fee that was required by §901.406 and §901.407 of the Act will be included in the renewal fee.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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22 TAC §515.11

The Texas State Board of Public Accountancy (Board) proposes the repeal of §515.11 concerning Licensing for Military Service Members, Military Veterans, and Military Spouses.

Background, Justification and Summary

The revision proposes to recognize the relocation of the rule providing accommodations to military service members, spouses and veterans to a new chapter.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the repeal.

Public Benefit

The adoption of the proposed revision will make it easier for the public to locate the rules on accommodating military service members, military spouses and military veterans.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the repeal and a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed repeal will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the repeal does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the repeal is in effect, the proposed repeal: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed repeal.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the repeal is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses. If the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the repeal, describe and estimate the economic impact of the repeal on small businesses, offer alternative methods of achieving the purpose of the repeal; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed repeal is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§515.11. Licensing for Military Service Members, Military Veterans, and Military Spouses.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304156
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 24, 2023
For further information, please call: (512) 305-7842

CHAPTER 516. MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS

22 TAC §516.1

The Texas State Board of Public Accountancy (Board) proposes new rule §516.1 concerning Definitions.

Background, Justification and Summary

Texas Occupation Code 55.0041 directs state agencies to accommodate military service members, military spouses and military veterans in practicing accounting in Texas.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the proposed new rule.

Public Benefit

The adoption of the proposed new rule will assist qualified service members, military spouses and military veterans in providing accounting services in Texas.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the proposed new rule and a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed new rule will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the new rule does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the new rule is in effect, the proposed new rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed new rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed new rule.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses. If the proposed new rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the new rule, describe and estimate the economic impact of the new rule on small businesses, offer alternative methods of achieving the purpose of the new rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed new rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§516.1. Definitions.

The following words and terms, when used in Title 22, Part 22 of the Texas Administrative Code relating to the Texas State Board of Public Accountancy, shall have the following meanings:

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001 of the Texas Government Code (relating to Definitions), or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Military service member" means a person who is on active duty.

(4) "Military spouse" means a person who is married to a military service member.

(5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(6) "Restrictive license" includes the following or its equivalent:

(A) an individual license that does not permit the attest service practice;

(B) an individual's retired or disabled license that limits an individual's authority to practice public accountancy;

(C) an individual's non-public industry license or authorization to practice; or

(D) a license that limits the scope of the individual's right to practice public accountancy.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 9, 2023.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 24, 2023
For further information, please call: (512) 305-7842

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22 TAC §516.2

The Texas State Board of Public Accountancy (Board) proposes new rule §516.2 concerning Licensing for Military Service Members and Spouses.

Background, Justification and Summary

Texas Occupation Code 55.004 directs a state agency that issues a license to military service members and military spouses to adopt rules that provide accommodations for their practice of public accounting in Texas.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the proposed new rule.

Public Benefit

The adoption of the proposed new rule will assist qualified military service members, and military spouses in providing accounting services in Texas in recognition of their service to this state to protect this state and its residents and assist them in overcoming the hardships created from their current military assignments.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the proposed new rule and a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed new rule will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the new rule does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the new rule is in effect, the proposed new rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed new rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed new rule.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses. If the proposed new rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the new rule, describe and estimate the economic impact of the new rule on small businesses, offer alternative methods of achieving the purpose of the new rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed new rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§516.2. Licensing for Military Service Members and Spouses.

(a) A military service member or military spouse may obtain a license if the applicant for licensure:

(1) through the fingerprinting process, has been deemed to have an acceptable criminal history according to Chapter 53 of the Texas Occupations Code (relating to Consequences of Criminal Conviction); and

(2) holds a current license with no restrictions issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in this state; or

(3) within the five years preceding the application date held a license in this state.

(b) The executive director may:

(1) waive any prerequisite to obtaining a license for an applicant described in subsection (a) of this section after reviewing the applicant's credentials; or

(2) consider, other methods that demonstrate the applicant is qualified to be licensed.

(c) The board will:

(1) process a military service member or military spouse's license application, as soon as practical but no more than 30 days from the date of receipt of the application, and issue a non-provisional license when the board determines the applicant is qualified in accordance with board rules;

(2) waive the license application and examination for a military service member or military spouse applicant:

(A) whose military service, training or education substantially meets all the requirements for a license; or

(B) who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to this agency's requirements; and

(3) notify the license holder of the requirements for renewing the license in writing or by electronic means and the term of the license.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 9, 2023.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 24, 2023
For further information, please call: (512) 305-7842

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22 TAC §516.3

The Texas State Board of Public Accountancy (Board) proposes new rule §516.3 concerning Licensing for Military Veterans.

Background, Justification and Summary

Texas Occupation Code § 55.004 directs state agencies to accommodate military veterans in obtaining a license to practice public accounting in Texas.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the proposed new rule.

Public Benefit

The adoption of the proposed new rule recognizes the service of military veterans to this state, and assists military veterans in providing public accounting services in Texas.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the proposed new rule and a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed new rule will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the new rule does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the new rule is in effect, the proposed new rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed new rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed new rule.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses. If the proposed new rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the new rule, describe and estimate the economic impact of the new rule on small businesses, offer alternative methods of achieving the purpose of the new rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed new rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§516.3. Licensing for Military Veterans.

(a) A military veteran may obtain a license if the applicant for licensure:

(1) through the fingerprinting process, has been deemed to have an acceptable criminal history according to Chapter 53 of the Texas Occupations Code (relating to Consequences of Criminal Conviction); and

(2) holds a current license with no restrictions issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in this state; or

(3) within the five years preceding the application date held a license in this state.

(b) The executive director may:

(1) waive any prerequisite to obtaining a license for an applicant described in subsection (a) of this section after reviewing the applicant's credentials; or

(2) consider other methods that demonstrate the applicant is qualified to be licensed.

(c) The board will:

(1) process a military veteran's license application, as soon as practical but no more than 30 days from the date of receipt of the

application, and issue a non-provisional license when the board determines the applicant is qualified in accordance with board rules;

(2) waive the license application and examination for a military veteran applicant:

(A) whose military service, training or education substantially meets all the requirements for a license; or

(B) who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to this agency's requirements; and

(3) notify the license holder of the requirements for renewing the license in writing or by electronic means and the term of the license.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 9, 2023.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 24, 2023
For further information, please call: (512) 305-7842

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22 TAC §516.4

The Texas State Board of Public Accountancy (Board) proposes new rule §516.4 concerning Accounting Practice Notification by Military Service Members and Spouses.

Background, Justification and Summary

Texas Occupation Code § 55.0041 directs state agencies to accommodate military service members and military spouses in practicing accounting in Texas while serving in the armed services. It allows military service members and military spouses to practice public accounting in Texas without a license and fees for up to three years so long as they have a license from a jurisdiction with substantially equivalent requirements. They may also practice in Texas without a license if they held a license in Texas within five years preceding the application date.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the proposed new rule.

Public Benefit

The adoption of the proposed new rule will assist qualified military service members and military spouses in providing accounting services to Texas residents.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the proposed new rule and a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed new rule will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the new rule does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the new rule is in effect, the proposed new rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed new rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed new rule.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses. If the proposed new rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the new rule, describe and estimate the economic impact of the new rule on small businesses, offer alternative methods of achieving the purpose of the new rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed new rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§516.4. Accounting Practice Notification by Military Service Members and Spouses.

(a) This section applies to all board regulated public accountancy practice requirements, other than the examination requirement, by a military service member or military spouse not requiring a license.

(b) A military service member or military spouse:

(1) may practice accounting in Texas during the period the military service member or military spouse is stationed at a military installation in Texas for a period not to exceed the third anniversary of the date the military service member or military spouse receives confirmation of authorization to practice by the board, if the military service member or military spouse:

(A) notifies the board of an intent to practice public accountancy in this state;

(B) submits proof of residency in this state along with a copy of their military identification card;

(C) receives from the board confirmation that the board has verified the license in the other jurisdiction and that the other jurisdiction has licensing requirements that are substantially equivalent to the board's licensing requirements; and

(D) receives confirmation of authorization to practice public accountancy in Texas from the board;

(2) may not practice in Texas with a restricted license issued by another jurisdiction nor practice with an unacceptable criminal history according to Chapter 53 of the Texas Occupations Code (relating to Consequences of Criminal Conviction); and

(3) shall comply with all other laws and regulations applicable to the practice of public accountancy in this state including, but not limited to, providing attest services through a licensed accounting firm.

(e) The board, in no less than 30 days following the receipt of notice of intent, will provide confirmation of authorization to practice to a military service member or military spouse, who has satisfied the board's rules.

(f) In the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the confirmation described by subsection (b)(1)(D) of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304160
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 24, 2023
For further information, please call: (512) 305-7842

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.66

The Texas Real Estate Commission (TREC) proposes new 22 TAC §537.66, Standard Contract Form TREC No. 59-0, Notice to Purchaser of Special Taxing or Assessment District, in Chapter 537, Professional Agreements and Standard Contracts. Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contracts for the sale of real property, although some forms are adopted by the Commission for voluntary use by license holders. Contract forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended the new rule, and the form adopted by reference, in Chapter 537 as a result of statutory changes enacted by the 88th Legislature in HB 2815 and HB 2816.

HB 2815 and 2816 replace the several different disclosure notices related to tax assessments made by water districts with a single notice and provides the language required for the notice. The bills also require the water districts to post their own notice online if they are required by the Tax Code to have a website.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rule. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be increased availability of a disclosure notice required by statute.

For each year of the first five years the proposed new rule is in effect the rule will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-

and-laws/comment-on-proposed-rules, to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The new rule is also proposed under Texas Occupations Code §1101.155, which allows the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Broker-Lawyer Committee and adopted by the Commission.

The statute affected by these amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments and new rules.

§537.66. Standard Contract Form TREC No. 59-0, Notice to Purchaser of Special Taxing or Assessment District.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 59-0 approved by the Commission in 2024 for voluntary use to fulfill the disclosure requirements of Texas Water Code §49.452 and §49.4521.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304139
Vanessa E. Burgess
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 24, 2023
For further information, please call: (512) 936-3284

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.68

Subchapter L. Workforce Diploma Pilot Program, §800.501

TWC proposes the following new section to Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.69

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The proposed amendments to Chapter 800 create new §800.69, Integrated English Literacy and Civics Education Program, which outlines how funds appropriated to the state under Workforce Innovation and Opportunity Act (WIOA), §243, Integrated English Literacy and Civics Education (IELCE), will be allocated through a statewide competition.

The proposed amendments incorporate into rule the requirements of House Bill (HB) 1602 and HB 2575, as passed by the 88th Texas Legislature, Regular Session (2023).

HB 1602 requires TWC to establish rules to develop performance criteria for the prioritization for the continuous award of grant funds. As such, TWC is proposing revisions to Subchapter B. Allocations, §800.68(a).

HB 2575 requires revisions to the definition of "qualified providers" in Subchapter L, Workforce Diploma Pilot Program, §800.501(12).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER B. ALLOCATIONS

TWC proposes the following amendments to Subchapter B:

§800.68. Adult Education and Literacy

Section 800.68 outlines how the state allocates General Revenue funds as well as WIOA, Title II, Temporary Assistance for Needy Families (TANF) funds to support the Adult Education and Literacy (AEL) program in Texas. Added to §800.68(a) are the HB 1602 requirements relating to priority of awarding grant funds based on performance criteria comparable to Texas Labor Code §315.007. TWC also proposes removing §800.68(d) and placing it in new section, §800.69.

§800.69. Integrated English Literacy and Civics Education Program

New §800.69 sets forth the state's allocation methodology that allows eligible applicants to demonstrate a need for funds to provide IELCE program activities to eligible adult learners across the state.

SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM

TWC proposes the following amendments to Subchapter L:

§800.501. Definitions

Section 800.501 is amended to update the definition of "qualified provider" to align with Texas Labor Code §317.004(2)(B), as amended by HB 2575.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are estimated losses in revenue to local governments as a result of enforcing or administering the rules. The US Depart-

ment of Education's Office of Career, Technical, and Adult Education (OCTAE) has determined that TWC's AEL program can no longer require applicants to accept both WIOA §231 and §243 funds. Instead, applicants must be allowed to choose whether to apply for one or both funds. In response to OCTAE's directive, TWC will offer AEL and Integrated English Literacy and Civics Education (IELCE) funds through separate competitive statewide applications. Separating the application processes could cause funding that was previously allocated to providers based upon the counties served in each local workforce development area (workforce area) to distribute differently. Specifically, IELCE funds will now be awarded through statewide competition and based on demonstrated need, while regular AEL funds will still be allocated proportionally to the state's 28 workforce areas based on eligible populations by county. IELCE funding will still be available statewide, but IELCE services may not be locally available in all 254 Texas counties due to the changes in the procurement process, which could mean a loss of funds in some areas if no providers apply for funding. In particular, some rural communities may not have a demonstrated need for the funds because of their small populations, which may cause a disadvantage for rural applicants.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules. Because IELCE funds now will be awarded through statewide competition instead of through proportional allocation to all workforce areas, smaller grant recipients in rural areas may not find it financially feasible to compete for grants.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to establish rules as required by HB 1602, amend existing rules as necessitated by HB 2575, and implement changes related to federal statutory requirements regarding the allocation of WIOA Title II funds.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--will not create or eliminate a government program;

--will not require the creation or elimination of employee positions;

--will not require an increase or decrease in future legislative appropriations to TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to maximize the use of funds while ensuring equitable access to entities that have demonstrated program effectiveness.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

The proposed amendments align TWC rules with federal statutes and regulations regarding procurement of WIOA Title II funds, and implement HB 1672 and HB 2575, as passed by the 88th Texas Legislature, Regular Session (2023). AEL program staff have informed AEL grant recipients of the proposed rulemaking through their regular biweekly conference calls. The public will have an opportunity to comment on these proposed rules for 30 days upon publication in the *Texas Register.*

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than December 25, 2023.

SUBCHAPTER B. ALLOCATIONS

40 TAC §800.68, §800.69

PART VI.

STATUTORY AUTHORITY

The rules are proposed under the following statutory authority:

--Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code Chapter 317, enacted by Senate Bill 1055, 86th Texas Legislature, Regular Session (2019), which required TWC to establish and administer the Workforce Diploma Pilot Program.

Additionally, HB 1602, 88th Texas Legislature, Regular Session (2023), added Texas Labor Code §315.002(b-1), which requires TWC to establish rules developing annual performance criteria for prioritizing the awarding of grant funds.

The proposed rules implement Title 4, Texas Labor Code, particularly Chapter 315.

§800.68. Adult Education and Literacy.

(a) AEL funds available to the Commission to provide services under the federal Adult Education and Family Literacy Act (AEFLA), WIOA Title II, together with associated state general revenue matching funds and federal TANF funds--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be used by the Commission, as set forth in subsections (b) - (d) [~~subsections (b) - (f)~~] of this section. Prior to any grant recipient receiving notice of an award, the Commission shall review and approve the award of grant funds to be issued under this program. The Commission shall give priority in awarding funds to entities that consistently satisfy annual performance requirements comparable to subsection (e) of this section.

(b) At least 82.5 percent of the federal funds constituting the total state award of AEFLA state grants--including amounts allotted to the eligible agency having a state plan, as provided by AEFLA §211(c) [~~and amounts provided to the eligible agency under §243 for English Literacy/Civics (EL/Civics)~~]--will be allocated by the Commission to the workforce areas. From the amount allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to the workforce areas according to the established federal formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain procedure.

(2) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (e) [~~subsection (f)~~] of this section.

(c) At least 80 percent of the state general revenue matching funds associated with the allotment of federal funds to the eligible agency having a state plan, as provided by AEFLA §211(c), will be allocated by the Commission to the workforce areas according to the established federal formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain procedure.

(2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by Commission policy.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (e) [~~subsection (f)~~] of this section.

[~~(d) At least 82.5 percent of the federal funds provided to the eligible agency from amounts under AEFLA §243 for EL/Civics will be allocated by the Commission among the workforce areas according to the established federal formula, as follows:~~]

[~~(1) The relative proportion based on:~~]

[~~(A) 65 percent of the average number of legal permanent residents during the most recent 10-year period, available from U.S. Citizenship and Immigration Services data; and~~]

[~~(B) 35 percent of the average number of legal permanent residents during the most recent three-year period, available from U.S. Citizenship and Immigration Services data;~~]

[~~(2) a base amount of 1 percent for each workforce area; and~~]

[~~(3) the application of a hold-harmless/stop-gain procedure.~~]

[~~(4) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA.~~]

[~~(5) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.~~]

(d) [~~(e)~~] At least 80 percent of federal TANF funds associated with the AEL program--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be allocated by the Commission to the workforce areas according to a need-based formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of the unduplicated number of TANF adult recipients with educational attainment of less than a secondary diploma during the most recently completed calendar year;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain procedure.

(2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (e) [~~subsection (f)~~] of this section.

(e) [~~(f)~~] AEL performance accountability benchmarks shall be established to coincide with performance measures and reports, or other periods, as determined by the Commission. Levels of performance shall, at a minimum, be expressed in an objective, quantifiable, and measurable form, and show continuous improvement.

(f) [~~(g)~~] Performance accountability benchmarks shall:

(1) include measures for high school equivalency program or ability-to-benefit program enrollment and achievement, as outlined in paragraph (2) of this subsection. A postsecondary ability-to-benefit program, as outlined in paragraphs (2) and (3) of this subsection, is a postsecondary education or training program that:

(A) results in a recognized postsecondary credential; and

(B) enrolls AEL eligible participants who:

(i) do not have a high school diploma or recognized equivalency;

(ii) qualify for federal student financial aid eligibility under the federal Ability-to-Benefit provisions enacted in §484(d) of the Higher Education Act of 1965; and

(iii) demonstrate on an assessment instrument that the participant can pass college-level courses with some support;

(2) include measures that require:

(A) at least 25 percent of all participants served in the program year to be enrolled in a high school equivalency or postsecondary ability-to-benefit program; and

(B) at least 70 percent of participants who were in a high school equivalency or postsecondary ability-to-benefit program during the program year and exited during the program year to achieve either a high school equivalency or a recognized postsecondary credential; and

(3) be approved by the Commission each program year for milestones toward meeting high school equivalency program or postsecondary ability-to-benefit program enrollment and achievement as outlined in paragraph (2) of this subsection.

§800.69. Integrated English Literacy and Civics Education Program.

(a) At least 82.5 percent of the AEFLA §243 Integrated English Literacy and Civics Education federal award allocated to the state must be awarded to entities with demonstrated effectiveness as determined through a statewide competitive procurement, as follows:

(1) 100 percent of the award will be based on the demonstrated need cited and supported with data by the eligible applicant as part of a statewide procurement;

(2) No more than 5 percent of the funds expended as part of the total allocation shall be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate;

(3) No more than 10 percent of this allocation shall be available for expenditure on the basis of the achievement of performance benchmarks, as set forth in §800.68(e); and

(4) The application of a hold-harmless/stop gain procedure.

(b) The Commission shall give priority in awarding funds to entities that consistently satisfy annual performance requirements comparable to §800.68(f) of this subchapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2023.

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Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 850-8356

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SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM

40 TAC §800.501

The rule is proposed under the following statutory authority:

--Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code Chapter 317, enacted by Senate Bill 1055, 86th Texas Legislature, Regular Session (2019), which required TWC to establish and administer the Workforce Diploma Pilot Program.

Additionally, HB 1602, 88th Texas Legislature, Regular Session (2023), added Texas Labor Code §315.002(b-1), which requires TWC to establish rules developing annual performance criteria for prioritizing the awarding of grant funds.

The proposed rule implements Title 4, Texas Labor Code, particularly Chapter 315.

§800.501. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Academic resiliency--A student's ability to persist and to academically succeed despite adversity.

(2) Academic skill intake assessment--A formal and/or informal assessment used at intake to gather information on a student's current knowledge and skills in specific academic areas (for example, literacy and numeracy). That information is then used to determine the student's appropriate instructional level as well as accommodations and/or remediation that the student needs.

(3) Career Pathway--A combination of rigorous and high-quality education, training, and other services that:

(A) aligns with the skill needs of industries in the economy of the state or regional economy involved;

(B) prepares an individual to be successful in any of a full range of secondary or postsecondary education options;

(C) includes counseling to support an individual in achieving the individual's education and career goals;

(D) includes, as appropriate, education offered concurrently with, and in the same context as, workforce preparation activities and training for a specific occupation or occupational cluster;

(E) organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;

(F) enables an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and

(G) helps an individual enter or advance within a specific occupation or occupational cluster (29 USC §3102, Definitions).

(4) Eligible participant--An individual who is over the age of compulsory school attendance, as prescribed by Texas Education Code, §25.085, and as required by the Agency, must:

(A) be a Texas resident;

(B) lack a high school diploma;

(C) be authorized to work in the United States; and

(D) be able to work immediately upon graduation from the program.

(5) Employability skills certification program--Refers to a certification in general skills that are necessary for success in the labor market at all employment levels and in all industry sectors. Employability skills include problem-solving, collaboration, organization, and adaptability.

(6) Half credit--The standard award of credit given for a course that lasts one semester, and which is based on the Carnegie Unit. When determining credits, qualified providers should consider instructional time plus the amount of time that the student would take to complete the coursework in a high school semester or academic year. In traditional education models, a student typically attends a class for 55 to 60 minutes a day for four or five days a week in addition to studying independently.

(7) High school diploma--A credential awarded by an entity, based on completion of all state graduation requirements as outlined in Texas Education Code, §28.025 and §39.023 and 19 TAC Chapter 74 (relating to Curriculum Requirements) and Chapter 101 (relating to Assessment).

(8) Industry-recognized credential--A state-approved credential verifying an individual's qualifications and competence and is issued by a third party with the relevant authority to issue such credentials (US Department of Labor, 2010). Industry-recognized credentials offered by qualified providers must align with the Agency's mission to target high-growth, high-demand, and emerging occupations that are crucial to the state and local workforce economies, and must reflect the target occupations for the workforce areas in which services will be provided. Qualified providers may also reference the list of industry-based certifications for public school accountability published by the Texas Education Agency.

(9) Learning Plan Development--The process by which an individualized learning plan is developed after student intake; it is maintained through coaching and mentoring.

(10) One credit--The standard award credit given for a course that lasts a full academic year, and which is based on the Carnegie Unit. When determining credits, qualified providers should consider instructional time plus the amount of time that the student would take to complete the coursework in a high school semester or academic year. In traditional education models, a student typically attends a class for 55 to 60 minutes a day for four or five days a week, in addition to studying independently.

(11) Program--Refers to the Workforce Diploma Pilot Program, set forth in Texas Labor Code, Chapter 317.

(12) Qualified provider--A provider that may participate in the Program and receive reimbursement and that:

(A) is a public, nonprofit, or private entity that is:

(i) authorized under the Texas Education Code or other state law to grant a high school diploma; or

(ii) accredited by a regional accrediting body, as established by the US Secretary of Education, pursuant to 20 USCS §1099b, Recognition of Accrediting Agency or Association and working in partnership with an entity described by clause (i) of this subparagraph;

(B) has at least two years of experience providing dropout reengagement services to adult students, including recruitment, learning plan development, and proactive coaching and mentoring, leading to the obtainment of a high school diploma;

(C) is equipped to:

(i) provide:

(I) academic skill intake assessment and transcript evaluations;

(II) remediation coursework in literacy and numeracy;

(III) a research-validated academic resiliency assessment and intervention;

(IV) employability skills development aligned to employer needs;

(V) career pathways coursework;

(VI) preparation for the attainment of industry-recognized credentials; and

(VII) career placement services; and

(ii) develop a learning plan that integrates academic requirements and career goals; and

(D) offers a course catalog that includes all courses necessary to meet high school graduation requirements in Texas, as authorized under 19 TAC Chapter 74, Subchapter B (relating to Graduation Requirements).

(13) Regional accrediting body--Must meet the criteria established by the US Secretary of Education pursuant to 20 USCS §1099b, Recognition of Accrediting Agency or Association, and appear on the US Secretary of Education's list of federally recognized accrediting agencies in the Federal Register, as stated in 34 CFR §602.2. A copy of the list may be obtained from the US Department of Education.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 805. ADULT EDUCATION AND LITERACY

SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

40 TAC §805.41

The Texas Workforce Commission (TWC) proposes amendments to the following section of Chapter 805, relating to Adult Education and Literacy:

Subchapter C. Service Delivery Structure and Alignment, §805.41

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 805 amendments is to align the rules with federal statutory language related to the state's requirement to award multiyear grants on a competitive basis to eligible providers with demonstrated effectiveness within the state.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

TWC proposes the following amendments to Subchapter C:

§805.41. Procurement and Contracting

Section 805.41(c) outlines the grant duration and term limits, which currently are more restrictive than federal statutory language. TWC seeks to align rule language to statutory language, which creates greater flexibility on defining grant duration.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend rules to implement changes related to the interpretation of federal statute and regulations regarding procurement of Workforce Innovation and Opportunity Act (WIOA), Title II funds.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--will not create or eliminate a government program;

--will not require the creation or elimination of employee positions;

--will not require an increase or decrease in future legislative appropriations to TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to create greater flexibility in the length of grant awards to ensure TWC can effectively develop, implement, and improve adult education and literacy services and programs within the state.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

The proposed amendments align TWC rules with federal statutes and regulations regarding procurement of WIOA Title II funds. Adult Education and Literacy (AEL) program staff have informed AEL grant recipients of the proposed rulemaking through their regular biweekly conference calls. The public will have an opportunity to comment on these proposed rules for 30 days upon publication in the *Texas Register.*

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than December 25, 2023.

PART VI.

STATUTORY AUTHORITY

The rule is proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule affects Title 4, Texas Labor Code, particularly Chapter 315.

§805.41. Procurement and Contracting.

(a) Eligible grant recipients shall compete for funding through a statewide procurement process conducted in accordance with federal and state procurement requirements. AEL funding shall be allocated as set forth in §800.68 and §800.69 of this title.

(b) Eligible grant recipients shall apply directly to the Agency using the grant solicitation process, and shall meet all deadlines, requirements, and guidelines set forth in the grant solicitation.

(c) Contracts awarded to AEL grant recipients shall be multiyear [~~limited to two years, with the option of three one-year renewals~~], at the Commission's discretion. In considering a renewal, the Commission shall take into account performance and other factors.

(1) Renewals for years three and beyond[~~, four, and five~~] are not automatic, and are based on meeting or exceeding performance and expenditure benchmarks, or other factors as determined by the Commission.

(2) The [~~At the completion of the five-year maximum contract term, the~~] Agency shall conduct a new competitive statewide procurement at its discretion and when appropriate to ensure that providers can effectively develop, implement, and improve AEL services and programs within the state[~~, including those contracts that have been in effect for less than the maximum five-year contract term~~].

(d) Determinations by the Agency in the statewide procurement process will be based on the indicated ability of the eligible grant recipient to effectively perform all services and activities needed to fully comply with contract performance requirements and all contract terms and conditions and may be influenced by factors used to determine the allocation of AEL funds or other objective data or criteria.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 845. TEXAS WORK AND FAMILY POLICIES RESOURCES [~~CLEARINGHOUSE~~]

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 845, relating to Texas Work and Family Clearinghouse:

Subchapter A. General Provisions, §845.1 and §845.2

Subchapter B. Dependent Care Grants, §§845.11 - 845.13

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed amendments to Chapter 845 is to implement House Bill (HB) 2975, 88th Texas Legislature, Regular Session (2023), relating to TWC's powers and duties with respect to work and family policies.

The Work and Family Policies Clearinghouse was created to house a grant program to provide assistance and information on dependent care and employment-related family issues, but its funding mechanism was repealed before it was implemented. HB 2975 amended Texas Labor Code Chapter 81 to disband the Clearinghouse and assigns all related responsibilities and rulemaking authority to TWC.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has conducted a rule review of Chapter 845, Texas Work & Family Clearinghouse, and any changes are described in Part II of this preamble.

CHAPTER 845. TEXAS WORK AND FAMILY CLEARINGHOUSE

TWC proposes the following amendment to the title of Chapter 845:

The Chapter 845 title is amended to remove "Clearinghouse" to align with Texas Labor Code Chapter 81 as amended by HB 2975. The chapter title is amended to read "Texas Work and Family Policies Resources."

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§845.1. Goals and Purpose

Section 845.1 is amended to replace "Clearinghouse" with "Policies Resources" to align with Texas Labor Code Chapter 81, as amended by HB 2975.

§845.2. Definitions

Section 845.2 is amended to remove the definition of "Clearinghouse" in accordance with Texas Labor Code §81.001, as amended by HB 2975. Remaining subsections are renumbered accordingly.

Renumbered §845.2(2) is amended for clarification to replace "Commission" with "Agency."

Renumbered §845.2(3) is amended to replace "Clearinghouse" with "Agency," because HB 2975 removed the clearinghouse from Texas Labor Code Chapter 81 and assigned its former responsibilities to TWC.

SUBCHAPTER B. DEPENDENT CARE GRANTS

TWC proposes the following amendments to Subchapter B:

§845.11. Submission of Grant Requests

Section 845.11 is amended for clarification to replace "Commission" with "Agency."

§845.12. Criteria for Awarding Grants

Section 845.12 is amended for clarification to replace "Commission" with "Agency."

§845.13. Cancellation or Other Corrective Action

Section 845.13 is amended for clarification to replace "Commission" with "Agency."

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to implement changes in accordance with HB 2975, 88th Texas Legislature, Regular Session (2023) relating to TWC's powers and duties with respect to work and family policies.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--will not create or eliminate a government program;

--will not require the creation or elimination of employee positions;

--will not require an increase or decrease in future legislative appropriations to TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Mary York, Director, Outreach & Employer Initiatives, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide employment-related information to Texas employers.

PART IV. COORDINATION ACTIVITIES

HB 2975 amended Texas Labor Code Chapter 81 resulting in the need for TWC to update the rules under Texas Administrative Code Chapter 845, Texas Work & Family Clearinghouse.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than December 25, 2023.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §845.1, §845.2

PART VI. STATUTORY AUTHORITY

The rules are proposed under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules are also proposed under the specific authority of HB 2975, 88th Texas Legislature, Regular Session (2023). The bill amended Texas Labor Code §81.0045(b) and §81.007 to grant all program rulemaking authority to TWC, which was previously shared with the Work and Family Policies Clearinghouse, which was abolished by HB 2975.

The proposed rules affect Title 2, Texas Labor Code, particularly Chapter 81.

§845.1. Goals and Purpose.

The purpose of the Texas Work and Family Policies Resources [~~Clearinghouse~~] is to provide technical assistance and information on dependent care and other employment-related family issues to public and private employers, state agencies, policymakers, and individuals.

§845.2. Definitions.

The [~~In addition to the definitions contained in §800.2 of this title, the~~] following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

[~~(1) Clearinghouse--The Texas Work and Family Clearinghouse established under Texas Labor Code Chapter 81, relating to Work and Family Policies.~~]

(1) [~~(2)~~] Dependent care--Care for a child, adult, or disabled relative who[~~, that~~] is claimed as a dependent for federal income tax purposes, that has an impact on employment-related family issues.

(2) [~~(3)~~] Grant applicant--A public or private person as defined in the request for proposal or request for application published by the Agency [~~Commission~~].

(3) [~~(4)~~] Grant recipient--A public or private person awarded a grant from the Agency [~~Clearinghouse~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2023.

TRD-202304097

Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: December 24, 2023
For further information, please call: (512) 850-8356

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SUBCHAPTER B. DEPENDENT CARE GRANTS

40 TAC §§845.11 - 845.13

The rules are proposed under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules are also proposed under the specific authority of HB 2975, 88th Texas Legislature, Regular Session (2023). The bill amended Texas Labor Code §81.0045(b) and §81.007 to grant all program rulemaking authority to TWC, which was previously shared with the Work and Family Policies Clearinghouse, which was abolished by HB 2975.

The proposed rules affect Title 2, Texas Labor Code, particularly Chapter 81.

§845.11. Submission of Grant Requests.

(a) A grant applicant may submit a grant request to the Agency [~~Commission~~] in response to requests for proposals or requests for applications.

(b) The Request for Proposal or Request for Application will include a deadline for submission if applicable, a statement of work related to the use of the funds, any information related to the use of the funds and any other requirements established by the Agency [~~Commission~~].

§845.12. Criteria for Awarding Grants.

The Agency [~~Commission~~] may consider the following factors in awarding grants:

(1) the purpose for which the specific grant is intended;

(2) coordination requirements with employer organizations, employee organizations, child health agencies, and the category of dependent care to be addressed;

(3) reporting and monitoring requirements;

(4) the appeal process applicable to the grant; and

(5) other criteria included by the Agency [~~Commission~~].

§845.13. Cancellation or Other Corrective Action.

(a) Cancellation. The Agency [~~Commission~~] may cancel a grant if the Agency [~~Commission~~] determines that the grant recipient has failed to perform as required in the grant request or award, or for circumstances that lead the Agency [~~Commission~~] to believe the grant recipient will fail to substantially comply with the terms set forth in the request for proposal, request for application, contract, or interagency agreement. Grounds for cancellation may also include: failure to ensure a program's intended results; waste, fraud or abuse of resources; and failure to timely capture, report, or use information to improve decision making.

(b) Corrective Action. The Agency [~~Commission~~] may take corrective action in lieu of cancellation if it is determined by the

Agency [~~Commission~~] to be the best course of action to facilitate the maximum use of funds.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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