

**TDHCA Board Approved *Draft* of 10 TAC Chapter 5,
Community Affairs, Subchapter L concerning Community
Affairs Monitoring**

Disclaimer

Attached is a draft of Chapter 5, Subchapter L – Community Affairs Monitoring that was approved by the TDHCA Governing Board on September 12, 2013. This draft incorporates changes made by the Board as a result of public comment at the meeting.

The rules are scheduled to be published in the October 4 edition of the *Texas Register* and will constitute the official version for purposes of public comment. The version herein should not be relied upon as the basis for public comment. The public comment period shall be October 4-November 4.

<u>TITLE 10</u>	COMMUNITY DEVELOPMENT
<u>PART 1</u>	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
<u>CHAPTER 5</u>	COMMUNITY AFFAIRS PROGRAMS
<u>SUBCHAPTER L</u>	COMMUNITY AFFAIRS MONITORING

§5.2101. Purpose and Overview.

(a) This subchapter provides the procedures that will be followed for monitoring for compliance with the community affairs programs administered by the Texas Department of Housing and Community Affairs (the Department). As of the date of the adoption of these rules, those programs include the Community Services Block Grant program (CSBG), the Low Income Home Energy Assistance Program (LIHEAP) (including the two (2) programs utilizing this funding source: the LIHEAP Weatherization Assistance Program (LIHEAP WAP) and the Comprehensive Energy Assistance Program (CEAP)), the Department of Energy Weatherization Assistance Program (DOE WAP), the Emergency Solutions Grant (ESG), and the Homeless Housing and Services Program (HHSP).

(b) Any entity administering any or all of the programs enumerated in subsection a, of this section is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has contracts for other programs through the Department, including but not limited to the HOME Partnerships Program, the Neighborhood Stabilization Program, or the Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of community affairs programs under these rules.

(c) Frequency of reviews, information collection. In general, Subrecipients will be scheduled for monitoring based on federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of contracts administered by the Subrecipient, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a single audit, complaints, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients will have an onsite review and which may have a desk review.

(d) The Department will provide a Subrecipient with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient by email to the Subrecipient's chief executive officer at the email address most recently provided to the Department by the Subrecipient. In general, a thirty (30) day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipient to provide to the Department the current contact information for the organization and the Board in accordance with §5.21 of this chapter, regarding Subrecipient Contact Information, and Title 10, Part 1, Chapter 1, §1.22 , regarding Providing Contact Information to the Department.

(e) Upon request, Subrecipients must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review. Typically, these records may include:

- (1) Minutes of the governing board and any committees thereof, together with all supporting materials;
- (2) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;
- (3) Procurement documentation;
- (4) The Subrecipient's Board approved operating budget;
- (5) The Subrecipient's strategic plan or comparable document if applicable;
- (6) Correspondence to or from any independent auditor;
- (7) Contracts with any third party Subrecipients of goods or services and files documenting compliance with any applicable procurement and property disposition requirements;
- (8) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);
- (9) Applicable client files with all required documentation;
- (10) Applicable human resources records;
- (11) Monitoring reports from other funding entities;
- (12) Client files regarding complaints, appeals and termination of services; and
- (13) Documentation to substantiate compliance with any other applicable state or federal requirements including, but not limited to, the Davis-Bacon Act, United States Department of Housing and Urban Development (HUD) requirements for environmental clearance, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, HUD limited English proficiency requirements, requirements imposed by Section 3 of the Housing and Urban Development Act of 1968.

(f) Post Monitoring Procedures. After the monitoring review is completed, the Subrecipient will be briefed on the initial findings and/or observations through an exit briefing, which may be in person or through a conference call. The Subrecipient will be notified via conference call or email of any finding(s) and/or observation(s) not discussed during the exit briefing. In general, within thirty (30) days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed and sent through the U.S. Postal Service to the Board Chair and the Subrecipient's Executive Director. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding.

(g) Subrecipient response. If there are any findings of noncompliance requiring corrective action, the Subrecipient will be provided thirty (30) days, from the date of the email, to respond which may be extended for good cause. In order to receive an extension, the Subrecipient must submit a written request to the Chief of Compliance within the corrective action period, stating the basis for good cause that the Subrecipient believes justifies the extension. The Department will approve or deny the extension request within three (3) business days.

(h) Monitoring close out. Within forty five (45) days after the end of the corrective action period, a close out letter will be issued to the Subrecipient. If the Subrecipient supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Subrecipient's response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as resolved. In some circumstances, the Subrecipient may be unable to secure documentation to resolve a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not resolved but close the issue with no further action required. If the Subrecipient's response does not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue.

(i) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Subrecipient in noncompliance, the Subrecipient may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to a program requirement or prohibition Subrecipients may contact the applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Subrecipient.

(2) If the issue is related to application of a provision of the contract or a requirement of the Texas Administrative Code, or the application of a provision of an OMB Circular, the Subrecipient may request review by the Department's Compliance Committee, as set out in subsection (j) of this section.

(3) Subrecipients may request Alternative Dispute Resolution (ADR). A Subrecipient may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to 10 TAC §1.17.

(j) Compliance Committee.

(1) The Compliance Committee is a committee of three (3) to five (5) persons appointed by the Executive Director. The Compliance Committee is established to provide independent review of certain compliance issues as provided by this section. Staff from the Legal and the Compliance Division will not be appointed to the committee but will be available to provide guidance to Department staff.

(2) Informal discussion with Compliance Monitoring staff. If the Subrecipient has questions or disagreements regarding any compliance issues, they should first try to resolve them by discussing them with the Compliance Monitoring staff, including, as needed, the Chief of Compliance.

(3) Informal discussion with the Compliance Committee. A Subrecipient may request an informal meeting with the Compliance Committee if the informal discussion with the Compliance Monitoring staff did not resolve the issue.

(4) Compliance Committee Process and Timeline:

(A) At any time, the Subrecipient may call or request an informal conference with the Compliance Monitoring staff and/or the Chief of Compliance.

(B) If a call or an informal conference with the Compliance Monitoring staff does not result in a resolution of the issue, the Subrecipient may, within thirty (30) days of the call or informal conference with Compliance Monitoring staff, request a meeting with the Compliance Committee.

(C) If timely requested in accordance with this section, the Compliance Committee will hold an informal conference with the Subrecipient. A Subrecipient should not offer evidence, documentation, or information to the Committee that was not presented to Compliance Monitoring staff during the informal staff conference. If additional information is offered, the Committee may disallow the information or refer the matter back to Compliance Monitoring staff to allow review of the additional information prior to any consideration by the Committee.

(D) If a meeting with the Compliance Committee does not result in a resolution, matters related to a compliance requirement, other than those required by federal regulation, may be appealed directly to the Board.

(k) If Subrecipients do not respond to a monitoring letter or fail to provide acceptable evidence of compliance within six (6) months of notification of an issue, the matter will be reported to the Department's Enforcement Committee for consideration of administrative penalties, review for a third party review, full or partial cost reimbursement, or contract suspension.