



OFFICE * OF * RURAL
COMMUNITY * AFFAIRS

Where rural Texas comes first.

ORCA Governing Board Meeting

February 5 & 6, 2009



**OFFICE OF RURAL COMMUNITY AFFAIRS
GOVERNING BOARD MEETING**

**February 5-6, 2009
Omni Austin Hotel at Southpark
4140 Governor's Row
Omni Room D
Austin, Texas 78744
1:15 PM**

NOTICE: Three Advisory Committees will meet on Feb 5, 2009 to review respective agenda items with ORCA staff. The committees and respective meeting times are:

Community Development – 10:00 AM

Finance and Disaster Recovery-- 11:00 AM

Rural Health – 11:00 AM

The public is welcome to attend the Advisory Committee meetings which will also be held in Room 104 or in close proximity.

The Board will discuss, consider and take appropriate action on the following agenda items beginning promptly at 1:15 PM on Feb. 5, 2009. All items not heard on Feb. 5th may be considered on Feb. 6th beginning at 8:30 AM.

A. CALL TO ORDER BY THE CHAIR

1. Roll call and certification of a quorum.
2. Consider approval of the minutes of the Dec. 11-12, 2009 meeting.

B. PUBLIC COMMENT

1. The Board will provide interested persons the opportunity to offer public comment on any matter within the jurisdiction of the agency and, if time permits, may offer this more than once. The Board may limit the time of each speaker to three minutes or less and exclude repetitious comments.

C. EXECUTIVE DIRECTOR

1. Swear in newly appointed Board member, Dora G. Alcala from Del Rio. Ms. Alcala will receive the Oath of Office from The Honorable Pete Gallego, State Representative, District 74.
2. Recognition of retired ORCA employee, Gina Garcia. (Action needed)
3. Consider taking action on the following activities related to the Texas Rural Foundation (TRF):
 - a. Consider appointments to the TRF Board.
 - b. Consider a proposed budget for TRF.
 - c. Consider adopting a plan of action for the TRF.
4. Consider proposed ineligibility rules related to ORCA TxCDBG programs found in Title 10 Part 6 Chapter 255, by adding Sec.255.1 (bb) in the Texas Administrative Code and authorize publication in the *Texas Register* for public comment. (Action needed)

D. TEXAS CAPITAL FUND PROGRAM (TCF)

1. Hear report on TCF activities.
2. Consider adoption of currently proposed Texas Capital Fund rule changes. (Action needed)

E. FINANCE

1. Hear an update on the agency's Fiscal Year 2009 Operating Budget. (Action needed)

F. STATE OFFICE OF RURAL HEALTH PROGRAM

1. Hear an update on the Rural Health Pilot Project using CDBG De-obligated funds.
2. Hear a report on the status of collection efforts by the OAG and ORCA staff related to grants and awards made by the agency.
3. Approve proposed adoption of rules relating to the Physician Assistant Loan Repayment Program previously proposed in the *Texas Register* (Action Required)

G. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

1. Hear an update on disaster declarations and applications received and approved under the Disaster Relief Fund.
2. Consider proposed amendments to ORCA TxCDBG programs found in Title 10 Part 6 Chapter 255 of the Texas Administrative Code relating to The Regional Review Committees and authorize publication in the *Texas Register* for public comment. (Action needed)
3. Consider adoption of amendments to ORCA TxCDBG programs found in Title 10 Part 6 Chapter 255 of the Texas Administrative Code relating to the removal of obsolete programs and other changes required by the 2009 Action Plan. (Action needed)
4. Hear report on the HUD Neighborhood Stabilization Program.

H. DISASTER RECOVERY DIVISION

1. Hear update on the status of the Proposed Action Plan for disaster recovery for Hurricane Ike/Dolly.
2. Hear report on the contracted services with engineering firm HNTB.
3. Hear disaster recovery status report on CDBG non-housing Round 1 & 2 Supplemental disaster funding.

I. OLD BUSINESS AND OTHER ITEMS

1. Consider setting the date and location for future meetings.

J. EXECUTIVE SESSION

THE BOARD MAY GO INTO CLOSED SESSION ON ANY ITEM LISTED ON THE AGENDA WHERE AUTHORIZED BY THE TEXAS OPEN MEETINGS ACT, CHAPTER 551, TEXAS GOVERNMENT CODE.

1. Executive Session Pursuant to Section 551.071 Government Code to consult with the Board's attorney concerning contemplated litigation, and all matters identified in the agenda in which the Board members seek the advice of their attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and pursuant to Section 551.074(a)(1) Government Code, for purposes of discussing personnel matters

including to deliberate the appointment, employment, evaluation, compensation, reassignment, duties, discipline, or dismissal of the Executive Director.

2. Action, if any, in open session on items discussed in the Executive Session.

K. ADJOURN

AGENDA ITEMS MAY NOT NECESSARILY BE CONSIDERED IN THE ORDER THAT THEY APPEAR. TIME SPECIFIC ITEMS ARE SO NOTED ON THE AGENDA.

Persons with disabilities, who plan to attend this meeting and are in need of a reasonable accommodation in order to observe or participate, should contact Sandy Seng at 512-936-6706 at least four (4) working days prior to the meeting.

To access this agenda and details on each agenda item in the Board book, please visit our website at www.orca.state.tx.us.

NONE AT THE TIME OF THIS
POSTING

**OFFICE OF RURAL COMMUNITY AFFAIRS
GOVERNING BOARD MEETING**

December 11-12, 2008
Texas State Capitol Extension
1100 Congress Avenue, Room E1.028
Austin, Texas 78701
1:00 PM

The Office of Rural Community Affairs Governing Board meeting convened at the Texas State Capitol Extension, 1100 Congress Avenue, Room E1.028, Austin, Texas at 1:00 PM on December 11, 2008. Chairman Wallace Klussmann recessed the meeting that same afternoon at 5:52 PM.

Chairman Klussmann called the meeting to order at 8:30 AM on Friday, December 12, 2008. Chairman Klussmann adjourned the meeting at 10:37 AM that same day.

Governing Board Members in Attendance

Present

Wallace Klussmann, Chairman
David Alders, Vice-Chairman
Mackie Bobo, Secretary
Charles Butts
Woody Anderson
Remelle Farrar
Commissioner Todd Staples
Charles Graham
Patrick Wallace

Not Present

Joaquin L. Rodriguez

Others Registered in Attendance

Last Name	First Name	Organization Represented
Eckels	Judge Robert	Governor's Commission on Disaster Recovery & Renewal
Rhodes	Rick	Texas Department of Agriculture
Young	Karl	Texas Department of Agriculture
Nicholes	Lesley	Texas Department of Agriculture
Spitzengel	Bruce	Grant Works, Inc.
Pearson	Dave	TORCH
Westbrook	Gilson	Baxter CDC
McPhee	Don	PMB Helin Donovan
Jandt	Jeff	PMB Helin Donovan
Laurance	Ronnie	West Texas AHEC
Inabinet	Michael	HNTB
Burnfield	Julie	East Texas Council of Governments
Mason	Brenda	Dripping Springs, TX
Rogers	Pam	

Agenda Item A

1. Chairman Klussmann called the meeting to order at 1:00 PM and asked Dr. Mackie Bobo, Secretary, to call the roll. A quorum was present.

Agenda Item B

1. Chairman Klussmann opened the meeting to public comment. The Board received comment from:
 - Mr. Ronnie Laurance, Director of Special Projects, West Texas Area Health Education Center
Mr. Ronnie Laurance provided to the Board information about their program and some general information about some funding issues. They are the outreach arm that has constant relationships with K-12 schools, other higher education institutions, community based organizations, local hospitals and other health care providers. They implement strategies that rural communities can use to recruit and retain health care providers that address the health care provider shortage in rural communities. The funding issues typically that they are facing is the transition from federal funding to state funding as federal funds decrease. Mr. Laurance believes that thru ORCA's prioritized Rural Policy recommendations comprehensive rural development, career and professional training, and recruitment and retention of health care professionals, aligns with those Rural Policy recommendations.

Chairman Klussmann closed the public comment period at 1:16 PM.

Agenda Item E

1. Mr. Rick Rhodes, Assistant Commissioner, Texas Department of Agriculture, for Rural Economic Development, gave an update to the Board of the 2008 Texas Capital Fund Program and its impact it has had on rural Texas this year. An updated report was presented to the Board that includes the fourth round of awards. It has been a very good year with the totals in the infrastructure and real estate awards section being about \$9.7 million that is being distributed to the rural communities for economic development projects. The Downtown Revitalization & Main Street Improvement Programs are the stepping stone for rural communities to start major work in their communities. Mr. Rhodes wanted to thank Mr. Karl Young, Finance Programs Coordinator, Texas Capital Fund, TDA, and his team on the wonderful job and the good customer service they do for the communities and also wanted to thank Mr. Charlie Stone, ORCA Executive Director, and his staff for the great partnership they have that results in a very positive significant impact for rural Texas.
2. Mr. Mark Wyatt, Director of the Texas Community Development Block Grant Program (TxCDBG), presented to the Board information for consideration of the proposed Interagency Contract between ORCA and the Texas Department of Agriculture for the administration of the Texas Capital Fund. Ms. Remelle Farrar made the motion that the Board authorize the Executive Director to execute the Interagency Agreement on behalf of the Office of Rural Community Affairs with the insertion of the language presented for Section 3, Paragraph B. Dr. Charles Graham seconded the motion. Commissioner Todd Staples abstained. The motion passed.

Agenda Item A

2. Chairman Klussmann called for a motion to approve the minutes from the October 3 & 4, 2008, Board Meeting and the November 24 & 25, 2008, Board Workshop. The minutes were approved as published.

Agenda Item C

1. Chairman Klussmann requested that Mr. Don McPhee and Mr. Jeff Jandt, with PMB Helin Donovan, deliver to the Board a follow-up on the IT Infrastructure and Security Audit reported from the October 2 & 3, 2008 Board meeting and review management responses. Mr. McPhee reported that ORCA management

agrees with the recommendations and the IS Team has updated the Information Systems Disaster Recovery Master Plan and this update has been submitted to agency management for review and approval. No action required.

2. Mr. Don McPhee, with PMB Helin Donovan, presented to the Board the proposed 2009 Internal Audit Plan for the Office of Rural Community Affairs. Mr. David Alders made the motion to approve the proposed 2009 Internal Audit Plan. Dr. Mackie Bobo seconded the motion. The motion passed unanimously.

Agenda Item G

1. Mr. Dave Pearson, President and CEO, with the Texas Organization of Rural & Community Hospitals (TORCH) provided to the Board an informative presentation on the efforts of their organization and how they interact with the Office of Rural Community Affairs.

Agenda Item C

3. Mr. Charlie Stone, ORCA Executive Director, presented to the Board a review of the prioritized list of policy recommendations to be presented to the 81st Session of the Texas Legislature in ORCA's Biennial Report, which were reviewed at the ORCA Board workshop on November 25, 2008. Dr. Mackie Bobo made the motion that the Board approve this prioritized list of policy recommendations with the revisions recommended. Mr. Charles Butts seconded the motion. The motion passed unanimously.
4. Mr. Charlie Stone, ORCA Executive Director, presented to the Board the recommendation to approve the Biennial Report. Dr. Charles Graham made the motion to approve the Biennial Report and any additional suggestions or revisions approved by the Board may be included by authorizing the Executive Director to make the changes and deliver the final version to the Legislature by the January 1, 2009 deadline. Dr. Mackie Bobo seconded the motion. The motion passed unanimously.

Chairman Klussmann called for a break. The time was 3:05 PM. Chairman Klussmann called the meeting to order at 3:15 PM.

Agenda Item I

2. Ms. Oralia Cardenas, Director of the Disaster Recovery Division, gave an overview to the Board on the proposed Action Plan for disaster recovery for Hurricane Ike. Mr. Charlie Stone, ORCA Executive Director, introduced Judge Robert Eckels, Chairman of the Governor's Commission on Disaster Recovery and Renewal, and Mr. Mike Gerber, Executive Director of the Texas Department of Housing and Community Affairs. Judge Eckels complimented ORCA on their work and the very fast track on the hearings process that he is getting some very positive feedback and he appreciates the work ORCA is doing. Mr. Mike Gerber gave a short report to the Board on the housing needs and identifying how the locals want to use the dollars that will ultimately be allocated for housing.

Ms. Remelle Farrar made the motion to authorize Mr. Charlie Stone, ORCA Executive Director, to approve the proposed Action Plan in final format for submission to HUD for approval. Dr. Charles Graham seconded the motion. The motion passed unanimously.

3. Ms. Oralia Cardenas, Director of the Disaster Recovery Division, reported to the Board the contracted services with HNTB, a nationally recognized engineering firm, to provide technical assistance and assist communities in prioritizing projects for Hurricane Ike disaster recovery assistance. Mr. Michael Inabinet, Deputy Program Manager of HNTB, discussed the progress of their services. No action required.

Agenda Item B

1. Chairman Klussmann opened the meeting to public comment. The Board received comment from:
 - Mr. Bruce Spitzengel, President, Grant Works, Inc.
Mr. Bruce Spitzengel, made comment regarding the agenda item I.3 and that he is very pleased in terms of the response that ORCA is taking and the level of responsibility to get the Disaster Recovery grants out to the communities. Mr. Spitzengel stated that he would like to be a partner and team member in working with ORCA in administering these grants and assistance that are going to rural communities. He feels that the communities want to work with entities that they are familiar with and who they have a relationship like local engineering firms that have been working with them for many years.

Chairman Klussmann closed the public comment period at 4:50 PM.

Agenda Item I

1. Ms. Oralia Cardenas, Director of the Disaster Recovery Division, gave a report to the Board on the activities of the newly created Disaster Recovery Division. ORCA established the Disaster Recovery Division on October 1, 2008 to continue to manage Hurricane Rita/Katrina disaster recovery funding, anticipated funding for hurricanes and any future disaster related funding. No action required.
4. Ms. Heather Lagrone, Manager, Disaster Recovery Division, presented to the Board a status report on the Supplemental CDBG Disaster Recovery Funds for Round 1 (Rita) and Round 2 (Rita) – Non-Housing and Infrastructure Funds. No action required.

Agenda Item G

2. Ms. Theresa Cruz, ORCA's Director of State Office of Rural Health and Compliance Division, presented a summary on the Rural Health Demonstration Project using TxCDBG Funds. Nine applications were received and SORH staff will review the applications, score them, and with recommendations submit to the State Review Committee at the next scheduled meeting, in January, 2009. No action required.
3. Ms. Theresa Cruz, ORCA's Director of State Office of Rural Health and Compliance Division, provided a status of historical recruitment and retention grant recipients: Where are they now? The five recruitment and retention programs within ORCA are the Outstanding Rural Scholar Recognition Program, the Texas Health Service Corp Program, the Medically Underserved/State Matching Incentive Program, the Physician Assistant Loan Repayment Programs, and the Rural Community Health Investment Program. No action required.
4. Ms. Theresa Cruz, ORCA's Director of State Office of Rural Health and Compliance Division, presented an update on collection efforts by ORCA and the Office of Attorney General related to grants and awards made by the agency. No action required.
5. Ms. Theresa Cruz, ORCA's Director of State Office of Rural Health and Compliance Division, presented to the Board the information for consideration of the recommendation and the acceptance of the appointment of the proposed Advisory Committee Member, Dr. Shana Munson, for the Outstanding Rural Scholar Recognition Program (ORSRP). Dr. Mackie Bobo made the motion that the Board appoint Dr. Munson to the Advisory Committee. Mr. Pat Wallace seconded the motion. The motion passed unanimously.

Chairman Klussmann recessed the meeting at 5:53 PM, Thursday, December 11, 2008, until 8:30 AM on Friday, December 12, 2008.

The Office of Rural community Affairs Governing Board meeting reconvened at the Texas State Capitol Extension, 1100 Congress Avenue, Room E1.028, Austin, Texas at 8:30 AM on Friday, December 12, 2008. Chairman Klussmann adjourned the meeting that same morning at 10:37 AM.

Agenda Item K

The Board entered into Executive Session at 8:33 AM on Friday, December 12, 2008. At this time, Chairman Klussmann made the following Executive Session announcement:

THE BOARD MAY GO INTO CLOSED SESSION ON ANY ITEM LISTED ON THE AGENDA WHERE AUTHORIZED BY THE TEXAS OPEN MEETINGS ACT, TEXAS GOVERNMENT CODE, CHAPTER 551.

1. Executive Session Pursuant to Government Code Section 551.071 to consult with the Board's attorney concerning contemplated litigation, and all matters identified in the agenda where the Board members seek the advice of their attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and pursuant to Section 551.074(a)(1) for purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, compensation, reassignment, duties, discipline, or dismissal of the Executive Director.
2. Action, if any, is open session on items discussed in the Executive Session.

At 9:25 AM, Chairman Klussmann announced:

"The Executive Session is ended. The date is Friday, December 12, 2008, and the time is 9:25 AM. No formal action was taken on any item in the Executive Session."

Agenda Item D

1. Mr. Charlie Stone, ORCA Executive Director, presented to the Board the Texas Rural Foundation's (TRF) next steps that TRF could implement for success: Appointments to the TRF Board, proposed budget for the TRF, and plan of action. The Board agreed to move \$25,000 to the TRF bank account from the ORCA general funds to bring the TRF bank account to an amount of \$50,000, then the Board will find matching funds to increase the TRF funds to \$100,000. Ms. Remelle Farrar agreed to organize a fund raising event to take place by June 2009. After discussion, it was agreed that this item be brought back to the ORCA Governing Board as an action item at the February, 2009 meeting.

Agenda Item F

1. Mr. David Flores, ORCA Chief Financial Officer, presented an update to the ORCA Board on the agency's Fiscal Year 2009 Operating Budget. No action required.

Agenda Item H

1. Mr. Mark Wyatt, Director of the Texas Community Development Block Grant Program (TxCDBG), presented to the Board an update on PY2008 disaster declarations, applications received and approved, and revised priorities under the Disaster Relief Fund. Ms. Remelle Farrar made the motion to approve the recommendation of the staff to revise the current policy: "The TxCDBG program shall prioritize the use of the Disaster Relief Fund for federal declarations and providing the federally required 25 percent match portion of the FEMA or NRCS approved budget covering approved repair and restoration activities except when supplemental federal funds are provided for applicable Presidential disaster declarations." Dr. Mackie Bobo seconded the motion. The motion passed unanimously.
2. Mr. Mark Wyatt, Director of the Texas Community Development Block Grant Program (TxCDBG), made a presentation to the Board to consider the proposed amendments to ORCA TxCDBG programs found in

Title 10 Part 6 Chapter 255 of the Texas Administrative Code and authorize publication in the *Texas Register* for public comment. Dr. Mackie Bobo made the motion that the Board approve publication of the proposed amendments in the *Texas Register* for public comment. Ms. Remelle Farrar seconded the motion. The motion passed unanimously.

3. Mr. Mark Wyatt, Director of the Texas Community Development Block Grant Program (TxCDBG), presented to the Board a report on the HUD's Neighborhood Stabilization Program. No action required.
4. Mr. Mark Wyatt, Director of the Texas Community Development Block Grant Program (TxCDBG), provided a summary to the Board on the Memorandum of Understanding (MOU) with the Texas Department of Housing and Community Affairs for the administration, operation, and program activities of the Colonia Self-Help Centers and to partially fund TDHCA's border field offices.

Dr. Mackie Bobo made the motion to approve the recommendation "That staff be authorized to enter into a Memorandum of Understanding with the Texas Department of Housing and Community Affairs for the administration, operation, and program activities of the Colonia Self-Help Centers and to partially fund TDHCA's border field offices." Mr. David Alders seconded the motion. The motion passed unanimously.

Agenda Item J

1. Mr. Jerry Walker, ORCA Director of Operations, presented to the Board a report on the activities performed by each division and how the agency is doing relative to meeting its Performance Measures. No action required.
2. Chairman Klusmann discussed future ORCA Board meeting locations and dates. It was discussed that the next meeting will be February 5-6, 2009 and the future meetings will be April 2-3, 2009, June 4-5, 2009, August 6-7, 2009, October 1-2, 2009 and December 3-4, 2009.

Agenda Item L

Chairman Klusmann adjourned the meeting at 10:37 AM on Friday, December 12, 2008.

NONE AT THE TIME OF THIS
POSTING

SUMMARY

New ORCA Board Member

Presented by Charlie Stone*

DISCUSSION

Governor Perry has appointed Dora G. Alcalá from Del Rio to the Governing Board of the agency to replace Lydia Saenz who recently resigned. Ms. Alcalá is the former Mayor of the City of Del Rio and serves on several state coalitions such as Ports to Plains, Tex 21 and the Texas Border Infrastructure Coalition.

Ms. Alcalá will attend training with ORCA staff on Wednesday February 4th which will qualify her to take the oath of office and become a full voting member of the Board on the 5th.

The Honorable Pete P. Gallego has graciously agreed to attend the Governing Board meeting and issue the Oath of Office. Rep. Gallego is a member of the Texas House of Representatives from District 74, which includes Brewster, Culberson, Edwards, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Uvalde, Val Verde, and Ward counties. The 74th House district is the largest House district and the largest Texas U.S.-Mexico border district stretching nearly 39,000 square miles and containing over half of the Texas/Mexico border. It is all rural.

RECOMMENDATION

For informational purposes only.

RURAL DEFINITION

N/A for this agenda item.

***Should an Executive Committee member have questions concerning this agenda item, please contact Charlie Stone at 512-936-6704, or cstone@orca.state.tx.us.**

SUMMARY

Retiring ORCA Employee

Presented by Charlie Stone*

DISCUSSION

ORCA is proud of its fine employees and on occasion, employees choose to retire and leave state service. The agency always takes the opportunity to recognize the accomplishments, hard work and dedication that these employees have displayed.

The following employee retired at the end of December with 30 years of state service: **Gina Garcia**

Prior to employment with ORCA, Gina worked at Texas Department of Human Resources, Texas Department of Economic Development and Texas Building and Procurement Commission. Gina began her ORCA employment on December 1, 2005 as our events planner and HUB coordinator.

Gina will be at the Board meeting on Thursday February 5th for her retirement recognition and will be presented a state flag that was flown over the Capitol and also a plaque.

RECOMMENDATION

SUGGESTED LANGUAGE FOR A MOTION—“I move that Gina Garcia be recognized for her contributions and dedication to the agency and State of Texas. In addition, the Governing Board of the Office of Rural Community Affairs extends its sincere appreciation for her many years of public service. ”

Pictures with the Board would be appreciated.

RURAL DEFINITION

N/A for this agenda item.

***Should a Board member have questions concerning this agenda item, please contact Charlie Stone at 512-936-6704, or cstone@orca.state.tx.us.**

SUMMARY

Texas Rural Foundation

Presented by Charlie Stone*

DISCUSSION

This item was discussed at the last Board meeting in December but no action was taken other than to request that it be brought back to the Board at the February meeting. The *Greenlights* report focused on three areas of highest importance that the Board should formally consider implementing to successfully launch and activate the TRF:

1. Appointments to the TRF Board -- Agenda item C. 3 (a)
2. Proposed budget for the TRF -- Agenda item C. 3 (b)
3. Plan of action -- Agenda item C. 3 (c)

Copies of information related to items 2 & 3 above are attached behind this executive summary sheet.

RECOMMENDATION

The Board should consider and take appropriate action on the three areas listed above which coincide with specific agenda items.

RURAL DEFINITION

N/A for this agenda item.

***Should a Board member have questions concerning this agenda item, please contact Charlie Stone at 512-936-6704, or cstone@orca.state.tx.us.**

AGENDA ITEM C.4
WILL NOT BE DISCUSSED AT THE
FEBRUARY 5-6, 2009,
GOVERNING BOARD MEETING.

2008 Texas Capital Fund Infrastructure and Real Estate Awards

1st Round (3/31/08)

Community	County	Business	Award	Total Proj	Type	Jobs
Olney	Young	Air Tractor, Inc.-airplane manufacturer	\$750,000	\$3,500,000	RE	41
Alvarado	Johnson	Sabre Communications, Inc-tower manufacturer	\$750,000	\$30,000,000	Infra	51
Culberson County	same	Royal Farms-farming (hay) operation	\$75,000	\$235,000	Infra	3
Driscoll	Nueces	Zeba, Inc.-travel center & convenience store	\$209,900	\$1,900,000	Infra	14
Sunnyvale	Dallas	Millard Refrigeration Services, Inc.-cold storage warehouse	\$750,000	\$49,000,000	Infra	70
Little Elm	Denton	Retractable Technologies, Inc.-medical supply manufacturer	\$750,000	\$3,000,000	Infra	38
			\$3,284,900	\$87,635,000		217

2nd Round (6/9/08)

Community	County	Business	Award	Total Proj	Type	Jobs
Hillsboro	Hill	DW Distribution, Inc.-distribution ctr for bldg products	\$750,000	\$9,000,000	Infra	52
Nixon	Gonzales	Holmes Foods, Inc.-poultry processor	\$750,000	\$4,700,000	Infra	38
			\$1,500,000	\$13,700,000		90

3rd Round (9/9/08)

Community	County	Business	Award	Total Proj	Type	Jobs
Gilmer	Upshur	Duoline Technologies, Inc.-oil well pipe manufacturer	\$543,600	\$18,000,000	Infra	46
Giddings	Lee	Sonya Hotel, LLC-hotel	\$200,000	\$3,510,000	Infra	8
Pecos City	Reeves	Pecos Lodging Group, Inc.-hotel	\$268,200	\$6,000,000	Infra	18
Port Lavaca	Calhoun	AMAL Hospitality, LLC-hotel	\$224,900	\$5,900,000	Infra	15
			\$1,236,700	\$33,410,000		87

4th Round (12/2/08) applications currently in review process

Community	County	Business	Request	Total Proj	Type	Jobs
McGregor	McLennan	RTLK Windtowers-windtower manufacturer	\$750,000	\$6,000,000	Infra	75
McGregor	McLennan	Brazos Ethanol-ethanol production plant	\$750,000	\$120,000,000	Infra	51
Uvalde	Uvalde	Sierra Industries, Ltd.-aircraft renovation	\$750,000	\$1,500,000	Infra	30
Kendall County	Kendall	Albany Engineered Composites-manufacture composite structures	\$335,000	\$41,600,000	Infra	63
East Bernard	Wharton	Union Motor Co. LLC-auto dealership	\$400,000	\$1,100,000	RE	10
Corsicana	Navarro	Denny's-restaurant	\$750,000	\$2,500,000	Infra	51
			\$3,735,000	\$172,700,000		280

Year to date grand total: \$9,756,600 \$307,445,000 674

**2008 TCF
Downtown Revitalization Program & Main Street Improvements Program**

Downtown Revitalization Program awards

Community	County	Business	Award	Match	Total Proj
Crosbyton	Crosby	Downtown Revitalization Program	\$150,000	\$45,200	\$195,200
Floydada	Floyd	Downtown Revitalization Program	\$150,000	\$104,000	\$254,000
Plains	Yoakum	Downtown Revitalization Program	\$150,000	\$72,300	\$222,300
Bogota	Red River	Downtown Revitalization Program	\$150,000	\$45,000	\$195,000
Daingerfield	Morris	Downtown Revitalization Program	\$150,000	\$45,000	\$195,000
Dimmitt	Castro	Downtown Revitalization Program	\$150,000	\$17,500	\$167,500
Jefferson	Marion	Downtown Revitalization Program	\$150,000	\$45,000	\$195,000
Lorena	McLennan	Downtown Revitalization Program	\$150,000	\$45,000	\$195,000
			\$1,200,000	\$419,000	\$1,619,000

Main Street Improvements Program awards

Community	County	Business	Request	Match	Total Proj
Beeville	Austin	Main Street Improvements	\$150,000	\$45,000	\$195,000
Clarksville	Red River	Main Street Improvements	\$150,000	\$45,000	\$195,000
Pilot Point	Denton	Main Street Improvements	\$150,000	\$45,000	\$195,000
Winnsboro	Wood	Main Street Improvements	\$150,000	\$45,000	\$195,000
			\$600,000	\$90,000	\$390,000

SUMMARY
Adoption of Proposed Rule Changes for the
2009 Texas Capital Fund
Downtown Revitalization and Main Street Programs

Presented by Karl Young*
Finance Programs Coordinator
Texas Department of Agriculture

DISCUSSION

The Texas Department of Agriculture (TDA) has proposed rule changes for the Texas Capital Fund (TCF) 2009 program year. TDA management believes it is time to consider various program changes to better address the needs of our communities. Most of these proposed changes will affect the scoring system for the Main Street Improvements and Downtown Revitalization programs. These proposed rule changes have been published in the *Texas Register* and the most recent public meeting was held on November 19th to solicit public comment. No official comment was received.

RECOMMENDATION

TDA Staff requests that the Board authorize the publication of the adoption of the currently proposed rules in the *Texas Register*. This will allow TDA to move forward with distribution of the 2009 TCF Main Street and Downtown Revitalization program Applications and Guidelines, conduct application workshops and receive applications in July and October.

RURAL DEFINITION

Non-entitlement cities with populations under 50,000 and counties under 200,000.

***Should an Board member have questions concerning this agenda item, please contact Mr. Young at 512-936-0281 or email at: (karl.young@tda.state.tx.us)**



Texas Department of Agriculture

Memorandum

To: ORCA Board

Charlie Stone, ORCA Executive Director

Thru: Rick Rhodes, Assistant Commissioner

From: Karl Young, Finance Programs Coordinator

Date: January 13, 2009

Re: Texas Capital Fund 2009 proposed rule changes

There is no state or federal requirement that TDA update, revise or change anything related to the TCF program annually. The historic program policy is to review the program periodically. Because of Commissioner Staples' interest in maximizing the economic development opportunities in rural Texas, we have an excellent opportunity to consider making changes to reflect those new views.

The process for implementing changes began several months ago. We held our first public meeting on June 4, 2008 and received several comments, which were used to further edit our proposed changes. We published revised rule changes in the *Texas Register* on November 14th and held a 2nd public meeting on November 19th to solicit public comment. The formal comment period in the *Register* ended December 14, 2008. No comment was received. A timeline is attached which lists activities still pending.

TDA Staff requests that the Board authorize the publication of the adoption of the currently proposed rules in the *Texas Register*. This will allow TDA to move forward with distribution of the 2009 TCF Downtown Revitalization and Main Street program Applications and Guidelines, conduct application workshops and receive applications in July and October.

Post Office Box 12847
Austin, Texas 78711-2847
512-936-0273

Texas Capital Fund

2009 Main Street & Downtown Revitalization Program Changes

TIMELINE

- Winter 08 Discuss possible changes with Texas Historical Commission staff.
- 4/3/08 Presentation to ORCA Board seeking approval to proceed with proposed rule publication in the *Tx. Register*.
- 5/16/08 Proposed rules published in the *Register*. This begins the required formal 30 day comment period.
- 6/4/08 Conducted public meeting to take comment.
- 6/16/08 Comment period ended.
- July 08 Revisions to proposed rule changes needed due to comments received.
- 10/3/08 Presentation to ORCA Board seeking approval to publish revised proposed changes.
- 11/14/08 Revised proposed rules published in the *Register*. This begins the required formal 30 day comment period.
- 11/19/08 Conducted public meeting to take oral comment.
- 12/11/08 ORCA Board meeting-status update report.
- 12/14/08 Formal comment period ends. No official comment received
- 1/14/09 Agenda items submitted to ORCA for Board meeting requesting authorization to proceed with rule adoption & program status update.
- 1/21/09 Submit to ORCA Board book items/material.
- 2/5/09 ORCA Board meeting-status update and request to proceed w/publishing adoption of proposed rule changes.
- 2/16/09 Submit adopted rule changes to ORCA staff for *Register* publication.
- 3/6/09 Proposed rules published in the *Register*. This begins the required formal 20 day period till effective adoption.
- Spring MS/DRP application workshops around state.
- 7/09 MS application workshop at Texas Historical Commission's Summer training
- 7/7/09 DRP applications due.
- 10/13/09 MS applications due.

DRAFT – Adoption Language For The *Texas Register* Publication

<p> The Office of Rural Community Affairs (OCRA) adopts amendments to <*>255.7, concerning the Texas Capital Fund, with changes to the proposal published in the November 14, 2008, issue of the <eti>Texas Register<et> (33 TexReg 9164). The amendments are adopted to allow for the equitable allocation of CDBG non-entitlement area funds to eligible units of general local government in Texas. More specifically, the amendment to <*>255.7(c) is made to allow the Texas Department of Agriculture (TDA) to accept untimely applications in certain circumstances when the delay was caused by extenuating circumstance that were unforeseeable by the applicant. This amendment will apply to the Texas Capital Fund grants, Main Street Program and Downtown Revitalization Program. The amendment to <*>255.7(h) requires Main Street Program applicants to only submit one application to the TDA to be evaluated by both by the Texas Historical Commission (THC) and TDA. The amendment to <*>255.7(i), affecting the scoring of Main Street Program applications, is adopted with a change made to correct a grammatical error in the title of subsection (i)(2)(D), by taking out the word “and”. The amendment to subsection (i) includes basing poverty information on the individual decennial Census data; broadening those agencies that will meet the criteria requiring a letter endorsing the project’s effect on historical assets and preservation; lowering the threshold for the percentage of letters required from affected businesses; eliminating the requirement for an engineer to prepare a 5 year infrastructure report; diversifying point allocation for historic preservation activities by awarding points not only for having enacted an historic preservation ordinance, but also for having main street design guidelines and awarding points based on the percentage of businesses occupying the project area; eliminating the criteria based on nominations or activity with the Historic Preservation Commission. The amendment to <*>255.7(l), affecting the scoring of Downtown Revitalization Program applications, is adopted with a change in the title of subsection (l)(2), made for purposes of consistency by changing “100” to “90”. The maximum scoring criteria points for the downtown revitalization program was changed to 90, as indicated in the title to subsection (l), the reference to the maximum points in the title to subsection (l)(2) was inadvertently not changed to be consistent with the change in points. Another change was made to subsection (l). Subsection (l)(2)(K) has been deleted. The subparagraph was inadvertently included in the proposal and is duplicative of subsection (l)(2)(A) which provides for points for poverty level. The amendments to subsection (l) include reducing the total points attainable; eliminating the criteria based on unemployment statistics; basing poverty information on the individual decennial Census data; broadening those agencies that will meet the criteria requiring a letter endorsing the project’s effect on historical assets and preservation; eliminating the criteria based on providing letters from 70% or more of the affected businesses; eliminating the criteria based on designation as a state or federal enterprise or defense zone; awarding points based on the percentage of businesses located in the project area.

<p>No public comment were received on the proposal.

<p>The amendments to <*>255.7 are adopted under the Texas Government Code <*>487.052, which provides the Office of Rural Community Affairs with the authority to adopt rules and administrative procedures to carry out the provisions of Chapter 487 of the Texas Government Code.



TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.7

The Office of Rural Community Affairs (OCRA) proposes amendments to §255.7, concerning the Texas Capital Fund. On April 3, 2008, the ORCA Board of Directors approved the first publication of this rule proposal for comment. The notice was published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3858) for a 30-day comment period. By the close of the comment period on June 16, 2008, substantive comments on many of the proposed changes had been received from 13 different parties. Because the Texas Department of Agriculture and ORCA agreed with some of the comments but could not incorporate them into the rules without another round of publication for comment, ORCA is withdrawing the proposal and proposing a revised rule for comment. The withdrawn rule appears elsewhere in this issue of the *Texas Register*. The comments received during the comment period ending June 16 have been reviewed and considered in this new proposal.

The proposed amendment to §255.7(c) will allow the Texas Department of Agriculture (TDA) to accept untimely applications in certain circumstances when the delay was caused by extenuating circumstance that were unforeseeable by the applicant. This proposed amendment will apply to the Texas Capital Fund grants, Main Street Program and Downtown Revitalization Program. The proposed amendment to §255.7(h) requires Main Street Program and Downtown Revitalization Program applicants to only submit one application to the TDA to be evaluated by both by the Texas Historical Commission (THC) and TDA. The proposed amendment to §255.7(i), affecting the scoring of Main Street Program applications, includes basing poverty information on the individual decennial Census data; broadening those agencies that will meet the criteria requiring a letter endorsing the project's effect on historical assets and preservation; lowering the threshold for the percentage of letters required from affected businesses; eliminating the requirement for an engineer to prepare a 5 year infrastructure report; diversifying point allocation for historic preservation activities by awarding points not only for having enacted an historic preservation ordinance, but also for having main street design guidelines and awarding points based on the percentage of businesses occupying the project area; eliminating the criteria based on nominations or activity with the Historic Preservation Commission. The proposed amendment to §255.7(l), affecting

the scoring of Downtown Revitalization Program applications, includes reducing the total points attainable; eliminating the criteria based on unemployment statistics; basing poverty information on the individual decennial Census data; broadening those agencies that will meet the criteria requiring a letter endorsing the project's effect on historical assets and preservation; eliminating the criteria based on providing letters from 70% or more of the affected businesses; eliminating the criteria based on designation as a state or federal enterprise or defense zone; awarding points based on the percentage of businesses located in the project area.

Charles (Charlie) S. Stone, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section, as amended.

Mr. Stone also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the section will be the equitable allocation of CDBG non-entitlement area funds to eligible units of general local government in Texas. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Karl Young, Finance Programs Coordinator, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

The amendments to §255.7 are proposed under the Texas Government Code §487.052, which provides the Office of Rural Community Affairs with the authority to adopt rules and administrative procedures to carry out the provisions of Chapter 487 of the Texas Government Code.

The Texas Government Code, Chapter 487, is affected by the proposal.

§255.7. *Texas Capital Fund.*

(a) - (b) (No change.)

(c) Application Dates. The TCF (except for the main street program and the downtown revitalization program) is available up to four times during the year, on a competitive basis, to eligible applicants statewide. Applications for the main street program and the downtown revitalization program are accepted annually. Applications will not be accepted after 5:00 p.m. on the final day of submission, unless the applicant can demonstrate that the untimely submission was due to extenuating circumstances beyond the applicant's control. The application deadline dates are included in the program guidelines.

(d) - (g) (No change.)

(h) Application process for the main street program. The application and selection procedures consist of the following steps:

(1) Each applicant must submit one [two] complete application [applications] to TDA [Texas Historical Commission (THC)]. No changes to the application are allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of the applications, staff from the Texas Historical Commission (THC) and TDA evaluate the [THC evaluates]

applications based on the scoring criteria and ranks them in descending order.

(3) - (8) (No change.)

(i) Scoring criteria for the main street program. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility and placed in descending order based on the scoring criteria. There is a total of 100 points possible.

(1) In the event of a tie score, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on the applicant's most recently available individual decennial Census [annual county] poverty rate [as provided in Appendix A of the application]. Thus, preference is given to the applicant with the higher poverty rate.

(B) (No change.)

(2) Project Feasibility (maximum 50 [70] points). Measures the applicant's potential for a successful project. Each applicant must submit detailed and complete support documentation for each category. Compliance with the ten criteria for Main Street Recognition is required. First year Main Street Cities must receive prior approval from THC to apply and must submit the Main Street Criteria for Recognition Survey with the TCF application. The criteria include the following:

(A) Broad-based public support for the proposed project--(10 points). Show letters of support from the following:

(i) Score 5 points for providing a letter from the County Historic Preservation Commission, the local design review board, the Economic Development Corporation or Chamber of Commerce supporting the project and describing how the project enhances the community's historic assets and historic preservation goals. [one letter from the County Historical Commission (A letter of support from the County Historical Commission is required to receive any points in this category.)]

(ii) Score 5 [10] points for letters from 50% [75%] or more of the businesses and/or property owners impacted by the proposed project within the designated Main Street district [in the proposed Texas Capital Fund project area]. This specifically includes businesses within one (1) block of the proposed improvements.

(B) Infrastructure Project Plan--(10 points). [Show the city's plan for dealing with an infrastructure project. Develop a plan for access to local business during the infrastructure project. Provide public notification to support the project.]

(i) Score 5 points for providing the city's plan for dealing with an infrastructure project, including a detailed description of how access will be provided to affected businesses during project construction.

(ii) Score 5 points for providing a general description of future infrastructure projects in the Main Street area, over the next five years, and the potential impact to the area.

(C) Sidewalks and ADA Compliance Goals--(10 points). [Does the project address ADA accessibility issues? How will ADA issues be addressed in the project. If project does not address ADA compliance issues, is the Main Street District in compliance with Federal ADA standards. If the project does not address ADA compliance, no points will be awarded for this category. Partial points may be awarded depending upon the degree in which the project addresses ADA compliance issues.]

(i) 5 Points awarded if a minimum of 50% of the requested funds will be used for sidewalk and/or ADA compliance activities, and

(ii) 10 points awarded if a minimum of 70% of the requested funds will be used for sidewalk and ADA compliance activities.

(D) Historic Preservation Ethic and [Preservation] Impact[~~--Main Street's Role--~~](10 points). Preservation is a major component of the THC's Main Street program. [Officially designated cities are eligible for the Texas Capital Fund grant based on their inclusion in the Texas Main Street program. Points will be awarded if the applicant has successfully addressed the criteria as follows: if the applicant successfully addressed the issue of enhancing historic assets and/or historic preservation goals; up to 5 points may be awarded. If the applicant has demonstrated that they have a current historic preservation ordinance; up to 3 points may be awarded based upon the content of the ordinance. Up to 2 points may be awarded for historic preservation-related programs or incentives. The THC mission is "To protect and preserve the state's historic and prehistoric resources for the use, education, enjoyment and economic benefit of present and future generations." Therefore, in the interest of accomplishing our mission, please answer the following:]

{(i)} Describe how the proposed Texas Capital Fund project enhances your historic assets or historic preservation goals.]

(i) [{(i)} Award 5 points to applicants that [Does the city] have a current historic preservation ordinance.?[

(ii) Award 5 points to applicants that have design guidelines for the Main Street program or project area.

{(iii)} Does the city have any historic preservation related programs or incentives?]

{(iv)} List any building demolitions within your Main Street project area during the past five years. If you had any building demolitions in the past five years, what was the age of the buildings that were demolished?]

(E) [State Enterprise Zone and] Economic Development Consideration--(5 [10] points) Five [Four] points will be awarded if the city has a nominated or active Enterprise Zone project. Three] points will be awarded if the city has the economic development sales tax (4A, 4B or both). [Three points may be awarded for other viable economic development programs the city offers in order to further realize its full economic development potential. Please document any other economic development programs and strategies that your city is engaged in.]

{(F)} Community Size--(10 points). Score 5 points if the population of the city is 12,000 or less; score additional 5 points if the population is less than 4,000, using 2000 census data. City population figures are net of the population held in adult or juvenile correctional institutions; as shown by the 2000 census data.]

(F) [{(G)} Main Street Program Participation--(5 points). Points are awarded on the applicant's continuous participation in the Main Street program as follows: For every two years of continuous participation in the Main Street program, the applicant will be awarded 1 point. Points will only be awarded for every two consecutive years and will not be broken into half points for increments other than two-year increments. If a city leaves the Main Street program and then returns at a later date, "continuous participation" will be calculated from the date that they returned to the program. Applicants will receive the maximum amount of points if they have participated in the program for 10 continuous years.

~~[(H) Texas Capital Fund Grant Training--(5 points). Has a city representative attended a Texas Capital Fund Main Street Improvements grant training workshop? At least one training workshop is held prior to each application deadline. List the date attended and the location. If the city is retaining a paid consultant to prepare the application, a city representative will still be required to attend training in order to receive the points in the category.]~~

(3) Applicant (maximum 50 [30] points). There are six [three] applicant scoring categories each worth 5 to 20 [10] points.

(A) (No change.)

(B) Leverage/Match (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional matching funds as follows[-] 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match may be cash and/or in-kind.

(C) Main Street Standing (maximum 5 [10] points). If the Main Street program received national Recognition the prior year, 5 [10] points will be awarded.

(D) Community Size--(10 points). Award 5 points if the population of the city is 12,000 or less; score additional 5 points if the population is less than 4,000, using the most recent decennial census data. City population figures are net of the population held in adult or juvenile correctional institutions.

(E) Texas Capital Fund Grant Training--Score 5 points if a city official/employee has attended a TCF, Main Street Improvements and/or Downtown Revitalization application training workshop, within the previous two (2) years.

(F) Poverty Level (maximum 10 points). Award 5 points if the city's most recent decennial Census, individual poverty rate is equal to or greater than the state poverty rate or award 10 points if the city rate is 15% or more over the state rate.

(j) - (k) (No change.)

(l) Scoring criteria for the downtown revitalization program. There are a total of 90 [100] points.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on applicant's most recently available individual decennial Census [annual county] poverty rate[, as provided in Appendix A of the application]. Thus, preference is given to the applicant with the higher poverty rate.

(B) (No change.)

(2) Maximum 100 points.

~~[(A) Unemployment (maximum 10 points). Five points awarded if the applicant's quarterly county unemployment rate (the most recently available 3 months will be used) is higher than the state rate, indicating that the city is economically below the state average. Ten points awarded if the applicant's most recently available quarterly county unemployment rate is 1.5% over the state rate.]~~

(A) ~~[(B)]~~ Poverty (maximum 10 [15] points). Awarded if the applicant's most recently available decennial [annual county] poverty rate for individuals [(from the 2000 Census)] is higher than the annual state rate for individuals [(from the 2000 Census)], indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average of 15.4% and[;] score 10 points if this figure exceeds 17.7%[; and score 15 points if this figure exceeds 19.25%].

~~(B) Economic Development Consideration--(5 points) awarded if the city has passed the economic development sales tax (4A, 4B or both).~~

~~[(C) Enterprise/Empowerment/Defense Zone (maximum 5 points). A project located in a state designated enterprise zone, federal enterprise community, federal empowerment zone, or defense zone receives these five points.]~~

(C) ~~[(D)]~~ Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded one contract in the current calendar year or preceding 2 calendar years. Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.

(D) ~~[(E)]~~ Community Population (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less, using 2000 census data. Score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(E) ~~[(F)]~~ Per Capita Income (maximum 10 points). Awarded to cities that have a per capita income below \$19,617.

(F) ~~[(G)]~~ Leverage/Match (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional matching funds. 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match can be cash and/or in-kind.

(G) Award 5 points to applicants if 50% or more of the structures within the project area are occupied by businesses.

(H) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Award 5 points if the city's minority employment rate is equal to or greater than the community minority percentages rate. Award 10 points if the city's minority employment rate is equal to or greater than 125% of the community minority percentage rate or in cities where the minority population is 80% or greater, the applicant must employ 95% minorities.

(I) Broad-based public support for the proposed project--(10 points). Show letters of support from the following: [Commercial Support (maximum 10 points): Award 5 points for letters from 50% or more of the businesses in the Downtown Revitalization area. Award 10 points for letters from 75% of the businesses in the Downtown Revitalization area.]

(i) Score 5 points for providing a letter from one of the following: the County Historic Preservation Commission, the local design review board, the Economic Development Corporation or Chamber of Commerce supporting the project and describing how the project enhances the community's historic assets and historic preservation goals.

(ii) Score 5 points for letters from 50% or more of the businesses and/or property owners impacted by the proposed project within the downtown business district. This specifically includes businesses within one (1) block of the proposed improvements.

(J) Sidewalks and ADA Compliance Goals--(10 points total). Five points awarded if a minimum of 50% of the requested funds will be used for sidewalk and/or ADA compliance activities; and 10 points [Points] awarded if a minimum of 70% of the requested funds will be used for sidewalk and/or ADA compliance activities.

(K) Poverty Level (maximum 10 points). Award 5 points if the city's most recent decennial Census, individual poverty

rate is equal to or greater than the state poverty rate or award 10 points if the city rate is 15% or more over the state rate.

(m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 3, 2008.

TRD-200805785

Charles S. (Charlie) Stone

Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: December 14, 2008

For further information, please call: (512) 936-6734



TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

13 TAC §35.1

The Texas Commission on the Arts (commission) proposes the amendment of §35.1 concerning a Guide to Operations.

The purpose of the proposed amendment is to be consistent with changes to programs and services of the commission and change the name of the Guide to Operations as outlined in the Guide to Programs and Services as amended October 2008.

Gary Gibbs, Executive Director, Texas Commission on the Arts, has determined that, for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing the amendment as proposed.

Mr. Gibbs also has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be the ability to utilize federal and state financial assistance funds in a more effective manner, thereby allowing more Texas organizations, communities, and citizens to participate in agency programs. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There will be no effect to small or micro businesses.

Comments on the proposal may be submitted to Gaye Greever McElwain, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted through 5:00 p.m. on November 14, 2008.

The amendment is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statutes, articles, or codes are affected by this proposal.

§35.1. *A Guide to Programs and Services* [A Guide to Operations].

The commission adopts by reference *A Guide to Programs and Services* (revised October 2008) [~~A Guide to Operations~~ (revised October 2007)]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at www.arts.state.tx.us.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 29, 2008.

TRD-200805711

Gary Gibbs, Ph.D.

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: December 14, 2008

For further information, please call: (512) 936-6562



13 TAC §35.2

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on the Arts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on the Arts (commission) proposes to repeal §35.2, concerning a Guide to Operations, Programs and Services.

The purpose of the proposed repeal is to be consistent with changes to programs and services of the commission as outlined in the Guide to Programs and Services as amended October 2008 in §35.1.

Gary Gibbs, Executive Director, Texas Commission on the Arts, has determined that, for the first five-year period the repeal is in effect, the anticipated public benefit will be the repeal of obsolete material thereby clarifying correct information for Texas organizations and citizens. There will be no fiscal implications for state or local government as a result of enforcing the repeal as proposed.

Mr. Gibbs also has determined that, for each year of the first five years the proposed repeal is in effect, there is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There will be no effect to small or micro businesses.

Comments on the proposed repeal may be submitted to Gaye Greever McElwain, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted through 5:00 p.m. on November 14, 2008.

The repeal is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statutes, articles, or codes are affected by this proposal.

§35.2. *A Guide to Programs and Services*.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

<*>255.7 Texas Capital Fund.

(a) General Provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. Under the main street improvements and downtown revitalization programs, projects must qualify to meet the national program objective of aiding in the prevention or elimination of slum or blighted areas.

(1) For an activity that creates/retains jobs, the city/county and business must document that at least 51% of the jobs are or will be held by low and moderate income persons. For purposes of determining whether a job is or will be held by a low or moderate income person or not, the following options are available.

(A) The business must survey all persons filling a created/retained job. Persons filling a created job should be surveyed at the time of employment. Persons holding a retained job should be surveyed prior to application submission. This determination is based on the family's size and previous 12 month income and is normally documented on the Family Income/Size Certification form, which is filled out, dated and signed by employees; or

(B) The person(s) employed by the business for created/retained jobs may be presumed to be a low or moderate income person if the person resides within a census tract or block numbering area that either is part of a Federally-designated Empowerment Zone or Enterprise Community or the person(s) reside in a census tract or block numbering area that meets the following criteria:

(i) The census tract or block numbering area has a poverty rate of at least 20% as determined by the most recently available decennial census information;

(ii) The census tract or block numbering area does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30% as determined by the most recently available decennial census information; and

(iii) The census tract or block numbering area shows evidence of pervasive poverty and general distress by meeting at least one of the following standards:

(I) All block groups in the census tract have poverty rates of at least 20%; or

(II) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20%; or

(III) Has at least 70% of its residents who are low- and moderate-income persons; or

(IV) The assisted business is located within a census tract or block numbering area that meets the requirements of this subparagraph, and the job under consideration is to be located within that census tract or block numbering area.

(2) If the project is designed to aid in the prevention or elimination of slum or blighted areas, then it must meet the area slum or blight or spot slum or blight criteria and threshold requirements outlined in the separate main street or downtown revitalization program applications.

(3) A firm financial commitment from all funding sources.

(4) The leverage ratio between all funding sources to the Texas Capital Fund (TCF) request may not be less than 1:1 for awards of \$750,000 or less; and 4:1 for awards of \$750,000 to \$1,000,000. The main street and downtown revitalization programs require a minimum 0.1:1 match.

(5) In order for an applicant to be eligible, the cost per job calculation must not exceed \$25,000 for awards of \$750,000 or less; and \$10,000 for awards of \$750,001 to \$1,000,000. These requirements do not apply to the main street program or the downtown revitalization program.

(6) No financial assistance will be provided to projects involved in the relocation of any industrial or commercial plant, facility or operation, from one state to another state, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs. No assistance will be provided for projects intended to facilitate the relocation of any industrial or commercial plant, facility or operation from one unit of general local government within Texas to another unit of general local government within Texas unless a 10% net gain of jobs will occur and one of the following requirements has been met prior to submitting an application for consideration under this section:

(A) Business to relocate with approval of current locality. Local government must provide written documentation within the application, verifying the chief elected official (mayor or judge) of the unit of local government from which the business is relocating supports and approves the relocation proposal. A written agreement between the two local governments involved in the business relocation is preferred.

(B) Local government notification with no response. Local government must provide written documentation that a letter has been mailed (by registered mail) to the local government from which the business is relocating, notifying it of the relocation. The local government, upon receipt of the notification, then has 30 days to object to the relocation, in writing, to the TDA before the TCF application can be considered. A written objection to a relocation from a local government will prevent the application from being considered.

(7) The TDA will not consider any application for funding which will result in the provision of assistance for an economic development project where the applicant and one or more other cities or counties are competing to provide economic development project funds to that project.

(8) The TDA will not consider any application for funding in which the business or principals to be assisted thereunder, or a business that shares common principals has filed under the Federal Bankruptcy Code, and the matter is in the process of being adjudicated or in which such business has been adjudicated bankrupt. On a case by case basis, extenuating circumstances will be evaluated.

(9) The TDA may consider applications in the real estate and infrastructure improvement programs that provide funding to benefit a maximum of three (3) businesses.

(10) The TDA will consider a project proposed by a city that is in the city's corporate limits or its extraterritorial jurisdiction, and will consider a project proposed by a county that is in the unincorporated area of the county. Counties may not sponsor an application for a business located in a city, if that business is currently participating in a TCF project with that city. TDA may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction, but within the county or contiguous counties (not to exceed five (5) miles beyond the city's extra-territorial jurisdiction that the city is located in and will consider a project proposed by a county that is within an incorporated city, if the applicant demonstrates that the project is appropriate to meet its needs, if the applicant has the legal authority to engage in such a project and if at least fifty-one percent (51%) of the principal beneficiaries reside within the applicant's jurisdiction.

(11) A TCF contractor must satisfactorily close out a contract in support of a specific business, downtown revitalization project, or main street project in order to be eligible to receive additional funds under the TCF for the same business, downtown project, or main street city. The contractor is eligible for an additional TCF award in support of a specific business, provided that the prerequisite program income choice has been selected, if the assisted business is not in the

designated main street or downtown business district geographic area and the assisted business will create or retain jobs to meet the national program objective.

(12) The TDA will not consider or accept an application for funding from a community, in support of a business project that is currently receiving TCF assistance through that same community.

(13) The minimum and maximum award amount that may be requested/awarded for a project funded under the TCF infrastructure or real estate development programs, regardless of whether the application is submitted by a single applicant or jointly by two or more eligible jurisdictions is addressed here. Award amounts are directly related to the number of jobs to be created/retained and the level of matching funds in a project. Projects that will result in a significantly increased level of jobs created/retained and a significant increase in the matching capital expenditures may be eligible for a higher award amount, commonly referred to as jumbo awards. TCF monies are not specifically reserved for projects that could receive the increased maximum award amount, however, jumbo awards may not exceed \$2 million in total awards during the program year. Additionally, no more than \$1 million in jumbo awards will be approved in any round. The maximum amount for a jumbo award is \$1 million and the minimum award amount is \$750,100. The maximum amount for a normal award is \$750,000 and the minimum award amount is \$50,000. These amounts are the maximum funding levels. The program can fund only the actual, allowable, and reasonable costs of the proposed project, and may not exceed these amounts. All projects awarded under the TCF program are subject to final negotiation between TDA and the applicant regarding the final award amount, but at no time will the award exceed the amount originally requested in the application.

(14) TDA will allocate the available funds for the year, less \$600,000 for the main street program, and \$1,200,000 for the downtown revitalization program, as follows:

(A) First round. 30% of the annual allocation plus any deobligated and program income funds available, as of the application due date. In the event there are sufficient funds to fund 50% or more of an application request, but less than 100%, additional funds may be allocated to allow full or 100% funding.

(B) Second round. 40% of the remaining allocation plus any deobligated and program income funds available, as of the application due date. In the event there are sufficient funds to fund 50% or more of an application request, but less than 100%, additional funds may be allocated to allow full or 100% funding.

(C) Third round. 50% of the remaining allocation plus any deobligated and program income funds available, as of the application due date. In the event there are sufficient funds to fund 50% or more of an application request, but less than 100%, additional funds may be allocated to allow full or 100% funding. If only three application rounds are scheduled, all remaining funds will be allocated to the final round.

(D) Fourth round. Any remaining allocation plus any deobligated and program income funds available, as of the application due date.

(b) Overview. This fund is distributed to eligible units of general local government for eligible activities in the following program areas:

(1) The infrastructure program. The infrastructure program provides funds for eligible activities such as the construction or improvement of water/wastewater facilities, public roads, natural gas-line main, electric-power services, and railroad spurs.

(2) The real estate program. The real estate program provides funds to purchase, construct, or rehabilitate real estate that is wholly or partially owned by the community and leased to a specific benefiting business (either a for-profit entity or a non-profit entity).

(3) The main street program. The main street improvements program provides public improvements in support of Texas main street program designated municipalities.

(4) The downtown revitalization program. The downtown revitalization program provides public improvements to a city's historic main business district.

(c) Application Dates. The TCF (except for the main street program and the downtown revitalization program) is available up to four times during the year, on a competitive basis, to eligible applicants statewide. Applications for the main street program and the downtown revitalization program are accepted annually. Applications will not be accepted after 5:00 p.m. on the final day of submission, unless the applicant can demonstrate that the untimely submission was due to extenuating circumstances beyond the applicant's control. The application deadline dates are included in the program guidelines.

(d) Repayment Requirements. TCF awards for real estate improvements and private infrastructure require repayment. Infrastructure payments and real estate lease payments are intended to be paid by the benefiting business to the applicant/contractor and constitute program income. The repayment is structured as follows:

(1) Real estate improvements. These improvements are intended to be owned by the applicant and leased to the business. Real estate improvements require full repayment. At a minimum, the lease agreement with the business must be for a minimum three year period or until the TCF contract between the applicant and TDA has been satisfactorily closed (whichever is longer). A minimum monthly lease payment will be required to be collected from the original business and any subsequent business which occupies the real estate funded by the TCF, which equates to the principal funded by the TCF divided over a maximum 20 year period (240 months), or until the entire principal has been recaptured. The repayment term is determined by TDA and may not be for the maximum of 20 years for smaller award amounts. There is no interest expense associated with an award. Payments begin the first day of the third month following the construction completion date or acquisition date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount. After the contract between the applicant and the Department is satisfactorily closed, the applicant will be responsible for continuing to collect the minimum lease payments only if a business (any business) occupies the real estate. The lease agreement may contain a purchase option, if the option is effective after a minimum five year ownership requirement and if the purchase price equals (at a minimum) the remaining principal amount originally funded by the TCF which has not been recaptured.

(2) Infrastructure improvements.

(A) Private Infrastructure is infrastructure that will be located on the business's site or on adjacent and/or contiguous property, to the site, that is owned by the business, principals, or related entities. All funds for private infrastructure improvements require full repayment. Terms for repayment will be interest free, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the third month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount.

(B) Public Infrastructure is infrastructure located on public property or right-of-ways and easements granted by entities unrelated to the business or its owners and not included or identified as private infrastructure. All funds for public infrastructure do not require repayment.

(C) Rail improvements on private property require full repayment. Terms for repayment will be no interest, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the third month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount.

(e) Application process for the infrastructure and real estate programs. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to the TDA Commissioner. The TDA Commissioner makes the final decision. The application and selection procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDA's Rural Economic Development Division. No changes to the application will be allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of applications, TDA staff reviews scores for validity and ranks them in descending order.

(3) TDA staff will review the applications for eligibility and completeness in descending order based on the scoring. The applicant will be given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature will be determined incomplete and returned. In the event staff determines that an application contains activities that are ineligible for funding, the application will be restructured or returned to the applicant. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The financial feasibility of the business to be assisted based on a credit analysis;

(B) The strength of commitments from all other public and/or private investments identified in the application;

(C) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(D) Whether efforts have been made to maximize other financial resources;

(E) Whether there is evidence that the permanent jobs created or retained will primarily benefit low-and-moderate income persons; and

(F) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TxCDBG funds.

(5) Upon TDA staff determination that an application supports a feasible and eligible project, staff normally will schedule a visit to the applicant jurisdiction to discuss the project and program rules with the chief elected official (or designee), business representative(s), and to visit the project site.

(6) TDA staff prepares a project report with recommendations (for approval or denial) to TDA's Commissioner.

(7) The TDA Commissioner reviews the recommendation and announces the final decision.

(8) TDA staff works with the recipient to execute the contract agreement. While the contract award must be based on the information provided in the application, TDA staff may negotiate some elements of the final contract agreement with the recipient.

(9) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, the award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the TDA Commissioner and then a single copy is returned to contractor.

(f) Scoring criteria for the infrastructure and real estate programs. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility in descending order based on the scoring criteria. There are a total of 100 points possible.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on the job impact. Thus, preference is given to the applicant with the greater job impact.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on the number of jobs proposed to be created and/or retained in the application. Thus, preference is then given to the applicant with the greater number of jobs.

(2) Community Need (maximum 40 points). Measures the economic distress of the applicant community.

(A) Unemployment (maximum 5 points). Awarded if the applicant's quarterly county unemployment rate (the most recently available 3 months will be used) is higher than the state rate, indicating that the community is economically below the state average.

(B) Poverty (maximum 10 points). Awarded if the applicant's annual county poverty rate for individuals (from the 2000 Census) is higher than the annual state rate for individuals (from the 2000 Census), indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average of 15.4%; and score 10 points if this figure exceeds the state average of 17.7%.

(C) Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded one contract in the current calendar year or preceding 2 calendar years. Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.

(D) Community Population/Size (maximum 10 points). Points are awarded to applying small cities and counties using 2000 Census data. For cities: score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,000. For counties: score 5 points if the county population is less than 35,000 and score 5 additional points if the county population is less than 15,000. Community population figures are net of the population held in adult or juvenile correctional institutions/facilities.

(E) Per Capita Income (maximum 5 points). Five points awarded to applicants that have a per capita income below \$19,617.

(3) Jobs (maximum 35 points).

(A) Job Impact (maximum 15 points). Awarded by taking the business' total job commitment, created and retained, and dividing by applicant's 2000 unadjusted population. This equals the job impact ratio. Score 5 points if this figure exceeds .00485; score 10 points if this figure exceeds .00969; and score 15 points if this figure exceeds .01455. County applicants should deduct the 2000 census population amounts for all incorporated cities, except in the case where the county is sponsoring an application for a business that is or will be located in an incorporated city. In this case the city's population would be used, rather than the county's. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown in the 2000 census data.

(B) Wage Impact (maximum 10 points). Awarded by taking the business' average weekly wage commitment, for all jobs proposed to be created and retained, and dividing by applicant's most recent county, quarterly, private sector average weekly wage. Score 5 points if this figure exceeds .50; score 10 points if this figure exceeds .60.

(C) Cost per Job (maximum 10 points). Awarded by dividing the amount of TCF monies requested (including administration) by the number of full-time job equivalents to be created and/or retained. Points are then awarded in accordance with the following scale:

(i) Below \$15,000--10 points.

(ii) Below \$20,000--5 points.

(4) Business/Economics Emphasis (maximum 25 points).

(A) Preferred/Primary jobs (maximum 20 points). Awarded if the jobs to be created and/or retained are or will be employed by a benefiting business whose primary North American Industrial Classification System (NAICS) code number falls into the categories identified in clauses (i) - (iii) of this subparagraph. This is based on the NAICS number reported on the business' Texas Workforce Commission (TWC) Quarterly Contribution Report, Form C-3, their IRS business tax return, or other documentation from the Texas Workforce Commission. Foreign or start-up businesses that have not had a NAICS code number assigned to them by either the TWC or IRS, may submit alternative documentation from TWC to support their primary business activity (NAICS code) to be eligible for these points.

(i) 20 points for the following NAICS category: 31-33 Manufacturing

(ii) 15 points for the following NAICS category: 111 Crop Production; 112 Animal, Poultry, and Egg Production; 113 Forestry/Logging; 114 Commercial Fishing; 115 Support Activities for Agriculture; 211-213 Mining; 42 Wholesale Trading; 48-49 Transportation/Warehousing; 51 Information (excluding 512-theaters); 5182 Data Processing, Hosting, and Related Services; 62 Health Care

(iii) 5 points for projects involving non-primary jobs, when the business offers a choice of medical prescription drug benefits to employees, including coverage for the family.

(B) Small/HUB businesses (maximum 5 Points). Awarded if each/the benefiting Business in a "multiple business" application employs less than 100 employees for all locations both in and out of state, or has been certified by the Comptroller of Public Accounts as a Historically Underutilized Business (HUB). This number is determined by the business and any related entities, such as parent companies, subsidiaries and common ownership. Common ownership is considered 51% or more of the same owners.

(g) Equity requirement by the business. All businesses are required to make financial contributions to the proposed project. A cash injection of a minimum of 2.5% of the total project cost is required. Total equity participation must be no less than 10% of the total project cost. This equity participation may be in the form of cash and/or net equity value in fixed assets utilized within the proposed project. A minimum of a 33% equity injection (of the total projects costs) in the form of cash and/or net equity value in fixed assets is required, if the business has been operating for less than three years and is accessing the R/E program. TDA staff will consider a business to have been operating for at least three years if:

(1) The business or principals have been operating for at least three years with comparable product lines or services;

(2) The parent company (100% ownership of the business) has been operating for at least three years with comparable product lines or services; or

- (3) An individual or partnership (100% ownership of the business) has been in existence/operation for at least three years with comparable product lines or services.
- (h) Application process for the main street program. The application and selection procedures consist of the following steps:
- (1) Each applicant must submit one complete application to TDA. No changes to the application are allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.
 - (2) Upon receipt of the applications, staff from the Texas Historical Commission (THC) and TDA evaluate the applications based on the scoring criteria and ranks them in descending order.
 - (3) TDA staff will then review the four highest ranking applications for eligibility and completeness in descending order based on the scoring. In the event the staff determines the application contains activities that are ineligible for funding, the application will be restructured or considered ineligible. The applicant will be notified of any deficiencies and given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature (e.g., lack of financial commitments) may be declined. In any event a determination is made that an application contains activities that are ineligible for funding, the application will be restructured or declined and the application materials will be retained by TDA. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.
 - (4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:
 - (A) The project feasibility;
 - (B) The strength of commitments from all other public and/or private investments identified in the application;
 - (C) Whether the use of TCF is appropriate to carry out the project proposed in the application;
 - (D) Whether efforts have been made to maximize other financial resources; and
 - (E) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF funds.
 - (5) Upon TDA staff determination that an application supports a feasible and eligible project, an on-site visit to the four highest scoring applicants may be conducted by TDA staff to discuss the project and program rules with the chief elected official, as applicable, or their designee and to visit the Main Street area.
 - (6) TDA staff prepares a project report and makes a recommendation for approval or denial to TDA's Commissioner or the Commissioner's designee for the final decision.
 - (7) The Commissioner reviews the recommendation and, if approved, an award letter is sent to the applicant's chief elected official.
 - (8) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the Commissioner or the Commissioner's designee and then a single copy is returned to contractor.
 - (i) Scoring criteria for the main street program. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility and placed in descending order based on the scoring criteria. There is a total of 100 points possible.
 - (1) In the event of a tie score, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on the applicant's most recently available individual decennial Census poverty rate. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria, then applications are ranked from lowest to highest based on the most recently available, quarterly, county unemployment rate provided by the Texas Workforce Commission. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Project Feasibility (maximum 50 points). Measures the applicant's potential for a successful project. Each applicant must submit detailed and complete support documentation for each category. Compliance with the ten criteria for Main Street Recognition is required. First year Main Street Cities must receive prior approval from THC to apply and must submit the Main Street Criteria for Recognition Survey with the TCF application. The criteria include the following:

(A) Broad-based public support for the proposed project--(10 points). Show letters of support from the following:

(i) Score 5 points for providing a letter from the County Historic Preservation Commission, the local design review board, the Economic Development Corporation or Chamber of Commerce supporting the project and describing how the project enhances the community's historic assets and historic preservation goals.

(ii) Score 5 points for letters from 50% or more of the businesses and/or property owners impacted by the proposed project within the designated Main Street district. This specifically includes businesses within one (1) block of the proposed improvements.

(B) Infrastructure Project Plan--(10 points).

(i) Score 5 points for providing the city's plan for dealing with an infrastructure project, including a detailed description of how access will be provided to affected businesses during project construction.

(ii) Score 5 points for providing a general description of future infrastructure projects in the Main Street area, over the next five years, and the potential impact to the area.

(C) Sidewalks and ADA Compliance Goals--(10 points).

(i) 5 Points awarded if a minimum of 50% of the requested funds will be used for sidewalk and/or ADA compliance activities, and

(ii) 10 points awarded if a minimum of 70% of the requested funds will be used for sidewalk and ADA compliance activities.

(D) Historic Preservation Ethic Impact (10 points). Preservation is a major component of the THC's Main Street program.

(i) Award 5 points to applicants that have a current historic preservation ordinance.

(ii) Award 5 points to applicants that have design guidelines for the Main Street program or project area.

(E) Economic Development Consideration--(5 points) Five points will be awarded if the city has the economic development sales tax (4A, 4B or both).

(F) Main Street Program Participation--(5 points). Points are awarded on the applicant's continuous participation in the Main Street program as follows: For every two years of continuous participation in the Main Street program, the applicant will be awarded 1 point. Points will only be awarded for every two consecutive years and will not be broken into half points for increments other than two-year increments. If a city leaves the Main Street program and then returns at a later date, "continuous participation" will be calculated from the date that

they returned to the program. Applicants will receive the maximum amount of points if they have participated in the program for 10 continuous years.

(3) Applicant (maximum 50 points). There are six applicant scoring categories each worth 5 to 20 points.

(A) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community. Score 10 points if the applicant's minority employment rate is equal to or greater than the applicant's community minority rate.

(B) Leverage/Match (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional matching funds as follows: 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match may be cash and/or in-kind.

(C) Main Street Standing (maximum 5 points). If the Main Street program received national Recognition the prior year, 5 points will be awarded.

(D) Community Size--(10 points). Award 5 points if the population of the city is 12,000 or less; score additional 5 points if the population is less than 4,000, using the most recent decennial census data. City population figures are net of the population held in adult or juvenile correctional institutions.

(E) Texas Capital Fund Grant Training--Score 5 points if a city official/employee has attended a TCF, Main Street Improvements and/or Downtown Revitalization application training workshop, within the previous two (2) years.

(F) Poverty Level (maximum 10 points). Award 5 points if the city's most recent decennial Census, individual poverty rate is equal to or greater than the state poverty rate or award 10 points if the city rate is 15% or more over the state rate.

(j) Threshold criteria for the main street program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) and paragraph (3) of this subsection.

(1) The national objective of aiding in the prevention or elimination of slum or blight on a spot basis. To show how this objective will be met, the applicant must:

(A) document that the project qualifies as slum or blighted on a spot basis under local law; and

(B) describe the specific condition of blight or physical decay that is to be treated.

(2) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §255.1(a)(14) of this title (relating to General Provisions), and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.

(3) Main street designation. The applicant must be designated by the THC as a Main Street City prior to submitting a TCF application for main street improvements and must remain a participating city for the duration of the award/contract.

(k) Application process for the downtown revitalization program. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to TDA Commissioner or the Commissioner's designee. TDA Commissioner makes the final decision. The application and selection procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDA's Rural Economic Development Division. No changes to the application will be allowed after the application deadline date,

unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of applications, TDA staff reviews scores for validity and ranks them in descending order.

(3) TDA staff will review the applications for eligibility and completeness in descending order based on the scoring. The applicant will be given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature will be determined incomplete and returned. In the event staff determines that an application contains activities that are ineligible for funding, the application will be restructured or returned to the applicant. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The strength of commitments from all other public and/or private investments identified in the application;

(B) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(C) Whether efforts have been made to maximize other financial resources; and

(D) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF funds.

(1) Scoring criteria for the downtown revitalization program. There are a total of 90 points.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on applicant's most recently available individual decennial Census poverty rate. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on the most recently available three (3) month county unemployment rate provided by the Texas Workforce Commission. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Maximum 90 points.

(A) Poverty (maximum 10 points). Awarded if the applicant's most recently available, decennial poverty rate for individuals is higher than the annual state rate for individuals, indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average of 15.4% and score 10 points if this figure exceeds 17.7%.

(B) Economic Development Consideration--(5 points) awarded if the city has passed the economic development sales tax (4A, 4B or both).

(C) Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded one contract in the current calendar year or preceding 2 calendar years. Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.

(D) Community Population (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less, using 2000 census data. Score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(E) Per Capita Income (maximum 10 points). Awarded to cities that have a per capita income below \$19,617.

(F) Leverage/Match (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional matching funds. 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match can be cash and/or in-kind.

(G) Award 5 points to applicants if 50% or more of the structures within the project area are occupied by businesses.

(H) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Award 5 points if the city's minority employment rate is equal to or greater than the community minority percentages rate. Award 10 points if the city's minority employment rate is equal to or greater than 125% of the community minority percentage rate or in cities where the minority population is 80% or greater, the applicant must employ 95% minorities.

(I) Broad-based public support for the proposed project--(10 points). Show letters of support from the following:

(i) Score 5 points for providing a letter from one of the following: the County Historic Preservation Commission, the local design review board, the Economic Development Corporation or Chamber of Commerce supporting the project and describing how the project enhances the community's historic assets and historic preservation goals.

(ii) Score 5 points for letters from 50% or more of the businesses and/or property owners impacted by the proposed project within the downtown business district. This specifically includes businesses within one (1) block of the proposed improvements.

(J) Sidewalks and ADA Compliance Goals--(10 points total). Five points awarded if a minimum of 50% of the requested funds will be used for sidewalk and/or ADA compliance activities; and 10 points awarded if a minimum of 70% of the requested funds will be used for sidewalk and/or ADA compliance activities.

(m) Threshold criteria for the downtown revitalization program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) of this subsection.

(1) The national objective of aiding in the prevention or elimination of Slum or Blight on a spot basis. To show how this objective will be met, the applicant must:

(A) document that the project qualifies as slum or blighted on a spot basis under local law; and
(B) describe the specific condition of blight or physical decay that is to be treated.

(2) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §255.1(a)(14) of this title, and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.

<p>This agency here by certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

<p>Filed with the Office of the Secretary of State on _____, 2009.

Charles (Charlie) S. Stone
Executive Director
Office of Rural Community Affairs*n

SUMMARY

FY 2009 Agency Operating Budget Update (As of December 31, 2008)

Presented by Sharon Page

DISCUSSION

Budget Changes

The 2009 Agency Operating Budget has been increased by \$254,012 to \$88,908,076. The increase is the result of:

- An **increase** of \$123,525 to the State Office of Rural Health (SORH) non-tobacco grants line-item of the budget from deobligated funds, grant funds remaining from 2008 and SORH funded administrative savings.
- An **increase** of \$85,333 to the salary line-item of the budget as a result of Executive & Finance Division management staff salary increases.
- An **increase** of \$25,000 to the grants line-item of the budget to match the Dian Graves Owen Foundation grant for the ORCA Rural Foundation.
- An **increase** of \$20,154 to the Computer Equipment and Rent Machine and Other line-items of the budget as a result of unspent 2008 Capital Budget that is available for use in 2009.

Pending Budget Items

2009 CDBG Grant Allocation – The 2009 CDBG allocation is budgeted at \$71,779,088 which is the 2008 funding level. Once the grant is received from HUD, an adjustment will be made to the 2009 Agency Operating Budget.

Hurricane Ike Grant Award – HUD has announced the allocation of more than \$2.1 billion to 13 States and Puerto Rico for emergency funding as a result of this years natural disaster's, of which, Texas received \$1.3 billion to support the States' long-term disaster recovery. The grant funds will not be added to the budget until the Action Plan is approved by HUD and decisions are made on the Infrastructure, Housing and Economic Development components as well as the entitlement and non-entitlement allocation.

Budget Status

Utilization – The Agency Operating Budget schedule shows that four months (33.3%) into the year, the:

- **Internal Administration** budget was at 22% expended/obligated
- **External Services** budget was 91% expended/obligated
- **Grants to Communities** budget was 13% expended/obligated

The **Internal Administration** budget activity is below target due to the new Disaster Recovery Division budget and vacant positions in the CDBG Division. As the Disaster Recovery Division becomes fully operational the percentages are expected to recover. The **External Services** budget activity is ahead of target due to the impact of the Engineering Services contract. The **Grants to Communities** budget activity is below target and will most likely remain so until the June, when staff will award the Community Development and Colonias funds which represent over 74% of the CDBG allocation.

Disaster Recovery Funds \$74,523,000 - Status

ORCA

	<u>Budget</u>	<u>Expended</u>	<u>Obligated</u>	<u>Remaining</u>
Grants	\$30,537,574	\$24,915,981	\$ 5,484,202	\$ 137,392
Admin	\$ 1,607,241	\$ 1,325,438	\$ 45,567	\$ 236,236
Total	\$32,144,815	\$26,241,419	\$ 5,529,769	\$ 373,628

TDHCA

Grants	\$40,259,276	\$20,881,754	\$18,553,533	\$ 823,989
Admin	\$ 2,118,909	\$ 1,706,091	\$ 270,189	\$ 142,628
Total	\$42,378,185	\$22,587,845	\$18,823,722	\$ 966,617

Hurricane Recovery Funds \$428,671,849 - Status

ORCA

	<u>Budget</u>	<u>Expended</u>	<u>Obligated</u>	<u>Remaining</u>
Grants	\$42,000,000	\$ 6,375,056	\$35,624,944	\$ 0
Admin	\$ 2,100,000	\$ 427,928	\$ 0	\$ 1,672,072
Total	\$44,100,000	\$ 6,802,984	\$35,624,944	\$ 1,672,072

TDHCA

Grants	\$365,238,439	\$40,083,647	\$325,044,266	\$ 110,526
Admin	\$ 19,333,410	\$ 4,819,951	\$ 0	\$ 14,513,459
Total	\$384,571,849	\$44,903,598	\$325,044,266	\$ 14,623,985

TxCDBG Fund Balance Report

As of December 31, 2008 the TxCDBG Fund Balance Report shows that \$664,673 is available from prior year deobligated contracts and program income.

In the October 2008 ORCA Board Meeting staff proposed, and the Board approved, setting aside \$1,000,000 in Deobligated and Program Income funds to initiate the Engineering services contract planning and assessment phase associated with Hurricane IKE.

Then in December 2008 the Governor's Office approved the temporary loan of \$6,000,000 in General Revenue funds to fund the Engineering Services contract and as a result the agency no longer needs the \$1,000,000 set-aside for the contract.

RECOMMENDATION

Staff recommends the Board approve the return of the \$1,000,000 set-aside for the Engineering Services contract back to the Deobligated and Program Income available balance. This will increase the CDBG Deobligated and Program Income available balance to \$1,664,673. **(Action Needed)**

Enclosures

FY 2009 Agency Operating Budget
FY 2009 Departmental Budget
TxCDBG Fund Balance Report

The budget schedules and reports are presented for informational purposes.

***Should any ORCA Board member have any questions concerning this agenda item please contact Ms. Page at (512) 936-6717 or spage@orca.state.tx.us**

ORCA FY 2009 Agency Operating Budget Schedule
As of December 31, 2008

ORCA ADMINISTRATION	ORCA Operating Budget	Expended As of 12/31/08	Obligated As of 12/31/08	Amount Remaining 12/31/08	Expended 12/31/08	Expended & Obligated 12/31/08
INTERNAL ADMINISTRATION						
Salaries and Wages	5,937,107	1,425,209	0	4,511,898	24%	24%
Other Personnel Costs	197,667	42,281	0	155,386	21%	21%
<i>Travel</i>						
In State Travel	562,500	60,338	0	502,162	11%	11%
Out of State Travel	39,960	4,113	0	35,847	10%	10%
<i>Capital Outlay</i>						
Computer Equipment	0	0	0	0	0%	0%
Other Furniture/Equipment	0	0	0	0	0%	0%
<i>Consumable Supplies</i>	68,073	7,897	27,202	32,974	12%	52%
<i>Utilities</i>	86,875	5,910	19,018	61,947	7%	29%
<i>Rent - Building</i>	88,300	4,614	2,247	81,439	5%	8%
<i>Rent Machine and Other</i>	66,410	8,993	21,896	35,521	14%	47%
<i>Other Operating Expense</i>						
Computer - Expensed	324,432	14,730	13,693	296,009	5%	9%
Furniture & Equipment - Expensed	156,688	5,294	3,314	148,081	3%	5%
Postage	52,188	3,294	8,000	40,894	6%	22%
Other	545,250	49,216	69,685	426,349	9%	22%
Subtotal, Internal Administration	8,125,447	1,631,888	165,055	6,328,506	20%	22%
EXTERNAL SERVICES						
Dept of Agriculture	442,781	0	184,492	258,289	0%	42%
Dept of Housing & Community Affairs	82,755	0	34,482	48,273	0%	42%
Councils of Government	272,761	0	240,566	32,195	0%	88%
Rural Health Physician Relief	166,176	0	0	166,176	0%	0%
Professional/Contracted Services	9,104,754	13,248	8,669,255	422,251	0%	95%
Subtotal, External Services	10,069,227	13,248	9,128,795	927,184	0%	91%
TOTAL, ORCA ADMINISTRATION	18,194,674	1,645,136	9,293,850	7,255,689	9%	60%
GRANTS TO COMMUNITIES						
TxCDBG Grants	65,408,312	0	6,236,188	59,172,124	0%	10%
Rural Technology Centers	0	0	0	0	0%	0%
Rural Foundation	32,500	0	0	32,500	0%	0%
SORH Grants (Excluding Tobacco)	2,841,537	421,131	2,045,274	375,132	15%	87%
SORH Grants (Tobacco)	2,431,052	300,000	0	2,131,052	12%	12%
Subtotal, Grants to Communities	70,713,401	721,131	8,281,462	61,710,807	1%	13%
TOTAL, ORCA	88,908,076	2,366,267	17,575,312	68,966,497	3%	22%

CDBG PROGRAM FUNDS AVAILABLE TO OBLIGATE 664,673

ORCA FY 2009 Agency Operating Budget Schedule
As of December 31, 2008

ORCA FY 2009 Departmental Budget Schedule
As of December 31, 2008

ORCA ADMINISTRATION	Community Development	Rural Health Compliance	Disaster Recovery	Finance	Executive Director	Proposed Budget
INTERNAL ADMINISTRATION						
Personnel						
Salaries and Wages	1,827,650	787,300	1,674,064	836,547	811,546	5,937,107
Other Personnel Costs	64,000	28,000	54,667	26,000	25,000	197,667
Travel						
In State Travel	180,000	70,000	205,000	25,000	82,500	562,500
Out of State Travel	6,900	6,080	19,980	0	7,000	39,960
Capital Outlay						
Computer Equipment	0	0	0	0	0	0
Furniture & Equipment	0	0	0	0	0	0
Consumable Supplies	17,600	7,700	28,748	7,150	6,875	68,073
Utilities	17,600	7,700	47,550	7,150	6,875	86,875
Rent - Building	6,400	18,600	58,200	2,600	2,500	88,300
Rent Machine and Other	16,845	6,945	29,475	6,681	6,463	66,410
Other Operating Expense						
Computer Equipment Expensed	54,770	22,848	200,000	22,673	24,141	324,432
Furniture & Equipment Expensed	12,000	5,250	129,875	4,875	4,688	156,688
Postage	12,000	5,250	25,375	4,875	4,688	52,188
Other	169,000	35,000	277,500	32,500	31,250	545,250
Subtotal, Internal Administration	2,384,765	1,000,673	2,750,434	976,052	1,013,524	8,125,447
EXTERNAL SERVICES						
Dept of Agriculture	442,781					442,781
Dept of Housing & Community Affairs	82,755					82,755
Councils of Government	272,761					272,761
Rural Health Physician Relief		166,176				166,176
Professional/Contracted Services	109,600	52,200	8,884,304	29,900	28,750	9,104,754
Subtotal, External Services	907,897	218,376	8,884,304	29,900	28,750	10,069,227
TOTAL, ORCA ADMINISTRATION	3,292,662	1,219,049	11,634,738	1,005,952	1,042,274	18,194,674
GRANTS TO COMMUNITIES						
TxCDBG Grants	65,408,312					65,408,312
Rural Technology Centers	0					0
Rural Foundation					32,500	32,500
SORH Grants (Excluding Tobacco)		2,841,537				2,841,537
SORH Grants (Tobacco)		2,431,052				2,431,052
Subtotal, Grants to Communities	65,408,312	5,272,589	0	0	32,500	70,713,401
TOTAL, ORCA	68,700,974	6,491,638	11,634,738	1,005,952	1,074,774	88,908,076

TxCDBG Fund Balance Report
as of December 31, 2008

Program Year	Fund Balance	Amount needed to Obligate TCF	Amount needed to Obligate ORCA	Deobligated Funds Available for TxCDBG	Program Income Funds Available for TxCDBG
1993	0.00	0.00	0.00	0.00	\$0.00
1994	187,886.74	0.00	0.00	187,886.74	\$0.00
1995	0.00	0.00	0.00	0.00	\$0.00
1996	77,835.46	0.00	0.00	77,835.46	\$674.67
1997	0.00	0.00	0.00	0.00	\$0.00
1998	200,052.50	0.00	0.00	200,052.50	\$28,782.22
1999	73,879.04	0.00	0.00	73,879.04	\$10,562.00
2000	220,701.74	0.00	0.00	220,701.74	\$35,178.96
2001	48,494.19	0.00	0.00	48,494.19	\$305,382.81
2002	909,137.46	0.00	0.00	909,137.46	\$123,750.00
2003	484,910.57	0.00	0.00	484,910.57	\$31,488.29
2004	807,205.42	0.00	0.00	807,205.42	\$100,000.00
2005	649,577.02	0.00	0.00	649,577.02	\$0.00
2006	1,774,674.85	0.00	0.00	1,774,674.85	\$12,363.02
2007	874,453.85	0.00	0.00	874,453.85	\$1,701,190.31
2008	6,498,036.00	3,642,059.00	1,679,726.36	1,176,250.64	\$2,241,841.81
TOTAL	12,806,844.84	3,642,059.00	1,679,726.36	7,485,059.48	\$4,591,214.09

IDIS AVAILABLE BALANCE		
Deob Available to Obligate	\$7,485,059	
Program Income Funds (Excluding 2% Admin)	\$4,591,214	
Total IDIS Available Balance		\$12,076,274
Reconciliation Adjustments:		
* Deob Pending IDIS Close Out	(\$3,074,290)	
Total Reconciliation Adjustments		(\$3,074,290)
ORCA Board Set-Asides:		
STEP Fund	(\$2,027,789)	
Additional Disaster Relief Fund - Reserve	(\$3,762,624)	
Urgent Need Fund	(\$500,000)	
Urgent Need Potential DR	(\$500,000)	
Disaster Recovery IKE	(\$1,000,000)	
State Office of Rural Health Project	(\$500,000)	
CSH Deob Reserve	(\$46,898)	
Total ORCA Board Set-Asides		(\$8,337,311)
CDBG PROGRAM FUNDS AVAILABLE TO OBLIGATE		\$664,673

* This balance reflects contracts that have been deobligated by ORCA staff in the internal Contract Management System, but not in HUD's Intergrated Disbursement & Information System (IDIS).

SUMMARY

Rural Health Demonstration Project using TxCDBG Funds

Presented by Theresa Cruz *

DISCUSSION

The State Office of Rural Health Division and the Texas Community Development Division of ORCA have collaborated to provide for the use of \$500,000 of do-obligated TxCDBG funds for a Rural Health Pilot Project. The Executive Committee voted to approve the proposed use of de-obligated TxCDBG funds for a Rural Health Project at the February 2008 meeting.

The deadline for submission of an application for the Rural Health Pilot Project was November 21st. Nine applications were received by the close of business on Friday, November 21st.

SORH staff and CDBG staff have reviewed and scored the applications. SORH staff presented a recommendation to the State Review Committee which met in Austin on January 23, 2009 to fund two projects:

- Washington County \$235,500 Renovation of building for use as health center
- City of Tenaha \$264,500 Construction of a dental facility (Requested \$500,000)

Please see the attached comprehensive summary for each project. Both projects have been approved for funding.

RECOMMENDATION

This Summary has been submitted for informational purposes. No action is required.

RURAL DEFINITION

Non-entitlement cities with populations under 50,000 and counties under 200,000.

***Should a Board member have questions concerning this agenda item, please contact Theresa Cruz at 512-936-6719. (tcruz@orca.state.tx.us)**

City of Tenaha-Shelby County

Shelby County is requesting \$500,000 for their project.

Shelby County is a Health Professional Shortage Area, a Medically Underserved Area, and a Dental Health Professional Shortage Area. Shelby County is also the 13th poorest county in Texas.

There are four dentists in the county. None are accepting new patients and none of them will accept Medicaid. Currently, dental patients are transported two hours away to Jasper under an agreement the East Texas Health Access Network.

The project seeks to build a dental clinic and staff the clinic with senior dental students from the University of Texas Dental Branch, Houston (precepted by a local dentist). A dental hygienist, from Tenaha, has expressed interest in returning to work at the clinic. Equipment for the clinic will be funded by foundation grants that have already been secured. For the first time, the poorest, rural residents of Shelby County, who have never had comprehensive dental care, will have it.

Other resources provided by the applicant total \$1,717,285.

Washington County

Washington County is requesting \$235,500 for their project.

The Washington County Health Center Coalition is composed of the Center for Community Health Development at Texas A&M School of Rural Public Health, Trinity Medical Center, Faith Mission and Washington County. The health center that this coalition is proposing will house local public health entities including WIC (Women, Infants and Children Program), MAP (Medical Assistance Program), State Health Services and Faith Mission Case Management Services under one roof, making it a “one-stop shop” for residents of Washington County. Also within the health center will be a clinic that offers health care to uninsured individuals. The care will be provided by a Nurse Practitioner.

The City of Brenham is donating the facility. Renovations of the building will be monitored by the Brazos Valley COG Engineering Department.

Other resources provided by the applicant total \$710,000.

SUMMARY
Collection Efforts by
The Office of the Attorney General
and ORCA
Presented by Theresa Cruz*

DISCUSSION

As part of our continuing effort to keep the Board up to date on collections, a report as of December 31, 2008 collections both by the OAG and by ORCA staff is attached behind this brief.

RECOMMENDATION

No action needed. For informational purposes only.

RURAL DEFINITION

N/A for this agenda item.

***Should an Board member have questions concerning this agenda item, please contact Theresa Cruz at 512-936-6719 or at tcruz@orca.state.tx.us.**

ORCA Rural Health - Outstanding Debt Collections

As of December 31, 2008

Collections by ORCA									
Student Name	Program *	Profession	Original Amount Owed	Year Entered	Default Program	Date	Balance as of \$ 39,813.00	FY 2009 Collections	Comment
Castillo, Renee	ORS	Registered Nursing	\$ 18,629.40	2003		2007	\$ 17,668.91	\$ 350.00	Pending referral to OAG
Chaka, Ted	ORS	Physician Asst.	\$ 33,933.34	2001		2005	\$ 20,470.73	\$ 2,889.04	
Dorman, April	ORS	Registered Nursing	\$ 51,762.77	2005		####	\$ 49,662.77	\$ 2,100.00	
Doss, Sarah	ORS	Family Medicine	\$ 59,196.68	1997		2004	\$ 11,839.78	\$ 3,946.44	
Simmons, Candice	ORS	Family Medicine	\$ 13,326.85	2007		####	\$ 12,477.37	\$ 849.48	
Ybarra, Annette	ORS	Pharmacy	\$ 76,500.00	2000		2004	\$ 11,440.00	\$ 5,100.00	
Total, ORCA			\$ 253,349.04				\$123,559.56	\$ 15,234.96	

Collections by the Office of Attorney General (OAG)									
Student Name	Program *	Profession	Original Amount Owed	Year Entered	Default Program	Date	Balance as of \$ 39,813.00	FY 2009 Collections	Comment
Cochran, Phillip	ORS	Family Medicine	\$ 133,938.93	1994		2003	\$ 42,154.16	\$ 7,331.16	
Fulcher, Jesseca	ORS	Registered Nursing	\$ 38,750.73	6/24/05		####	\$ 38,750.73	\$ -	OAG seeking to garnish bank account
Ginbey, Deborah	ORS	Registered Nursing	\$ 70,356.63	1995		2001	\$ 64,891.69	\$ 1,844.97	Referred to OAG December 2008
Munroe, Joseph	THSC	Family Medicine	\$ 10,250.00	6/28/05		####	\$ -	\$ 10,249.61	Paid in Full as of 9/8/2008
Rizer, Tabbatha	ORS	Registered Nursing	\$ 86,203.20	2005		2007	\$ 84,878.48	\$ -	Referred to OAG 4/18/2008
Taylor, Margaret	ORS	Physician Asst.	\$ 7,824.35	1998		2000	\$ 6,929.33	\$ 600.00	Referred to OAG 12/4/2006
Zube, Robert	ORS	Emergency Medicine	\$ 221,634.03	1999		2006	\$ 199,887.61	\$ 6,000.00	
Total, Attorney General			\$ 568,957.87				\$437,492.00	\$ 26,025.74	

	Original Amount Owed			Balance as of \$ 39,813.00	FY 2009 Collections
Total	\$ 822,306.91			\$561,051.56	\$ 41,260.70

* ORS - Outstanding Rural Scholar Program

THSC - Texas Health Services Corps Program

SUMMARY

Adoption of Proposed Changes to ORCA State Office of Rural Health Physician Assistant Loan Repayment Program Found in Title 10 Part 6 Chapter 257, Sect. 257.101 of the Texas Administrative Code

Presented by Theresa Cruz *

DISCUSSION

The State Office of Rural Health (SORH) Division administers the Physician Assistant Loan Repayment Program (PALRP), which allows for loan repayment of up to \$5,000/yr for a total of \$20,000 in loan repayments available to physician assistants who are practicing in rural areas of Texas. With the last two award cycles, ORCA staff has not been able to grant the total amount available (\$112,000) because there is a maximum award of \$5,000 per grant, and the number of eligible applicants did not allow for full distribution of funds. Since this program is funded through General Revenue, ORCA is not allowed to carry funds forward from biennium to biennium, and as a result risks losing the “excess” funding as a result of not expending the full grant award. SORH staff reviewed the Texas Administrative Code for language allowing the Executive Director the discretion to increase the maximum amount awarded as appropriate as is present in the other recruitment program rules, and did not find the needed language. Additionally, at the recommendation of ORCA General Counsel, SORH staff requests changing the Chapter 257 Title from: “**BOARD FOR OFFICE OF RURAL COMMUNITY AFFAIRS**”, to: “**STATE OFFICE OF RURAL HEALTH**”, since this chapter pertains solely to the rules governing the State Office of Rural Health programs

The requested changes were approved by the Board at the October 2008 meeting, and submitted to the Texas Register for public comment. No comments were received.

RECOMMENDATION

SORH staff recommends adoption of the approved changes. Action is required.

RURAL DEFINITION

For purposes of the Rural Health grants, “Rural” is defined as counties that are not designated as “Metropolitan Statistical Areas”, as determined by the Office of Management and Budget.

*Should a Board member have questions concerning this agenda item, please contact Theresa Cruz at 512-936-6719. (tcruz@orca.state.tx.us)

SUMMARY

Disaster Relief Fund Update

Presented by Mark Wyatt*

DISCUSSION

For Program Year 2008, ORCA has made available up to \$17,710,228 in funds to provide assistance under the Texas CDBG Disaster Relief Fund. This amount includes up to \$14,767,285 of Deobligated Funds and/or Program Income. This would be the highest total Program Year commitment level since the Disaster Relief Fund began in 1992. (These are funds provided under the regular TxCDBG program and not the supplemental CDBG Disaster Recovery funding.)

2008 Allocation & Deobligated Funds and/or Program Income the Disaster Relief Fund:

Amount Remaining, as of 1/26/2009, for February and March 2009: \$3,366,439

History of Disaster Relief Awards – TxCDBG

1992	\$699,534
1993	\$1,820,200
1994	\$1,987,546
1995	\$2,947,042
1996	\$4,285,113
1997	\$6,294,168
1998	\$3,902,787
1999	\$6,562,878
2000	\$6,583,629
2001	\$5,806,149
2002	\$7,330,563
2003	\$6,237,789
2004	\$5,661,479
2005	\$5,915,869
2006	\$2,824,760
2007	\$8,269,065
<u>2008</u>	<u>\$17,033,947</u>
Total	\$94,162,518

Recent awards:

The State Review Committee approved on January 23, 2009, three Disaster Relief Fund awards that total \$896,185 to the following: Fannin County, Red River County, and Val Verde County.

Current Status Report

Anticipated demand in the coming two months:

February and March 2009: approximately \$2,000,000 <=====

Staff anticipates recommending at a future board meeting the use of any existing Deobligated funds and/or Program Income for the Disaster Relief Fund to build up a reserve.

RECOMMENDATION

No action is required. This report is provided for informational purposes only.

RURAL DEFINITION

Non-entitlement cities with populations under 50,000 and counties under 200,000.

***Should a Board member have questions concerning this agenda item, please contact Mr. Wyatt at 512-936-6725 (mwyatt@orca.state.tx.us)**

SUMMARY

Proposed Amendments to the TxCDBG Program Found in Title 10 Part 6 Chapter 255 of the Texas Administrative Code

Presented by Mark Wyatt*

DISCUSSION

The attached proposed amendment to the Texas Administrative Code would revise the method of appointing the members and chairperson of the Regional Review Committees (RRCs). The RRC establishes the region's scoring criteria for the Community Development Fund and are a creation of the TxCDBG's Action Plan, not any Texas statute.

Currently, the Governor is required to appoint all members and the chairperson. This revision in TxCDBG rules would lessen the administrative burden on the Governor's appointment office and has received the favorable concurrence of the Governor's office.

Specifically, it would provide for each of the 24 Councils of Governments to appoint the Regional Review Committee members and chairperson for their state planning region.

RECOMMENDATION

Staff recommends that the Board approve the publication of the proposed amendment in the Texas Register for public comment.

RURAL DEFINITION

Non-entitlement cities with populations under 50,000 and counties under 200,000.

***Should a Board member have questions concerning this agenda item, please contact Mr. Wyatt at 512-936-6725 (mwyatt@orca.state.tx.us)**

§255.8 Regional Review Committees.

(a) Composition. ~~There is a regional review committee in each of the 24 state planning regions. Each committee consists of at least 12 members appointed by the governor.~~ There is an established Community Development Fund Regional Review Committee for each of the 24 state planning regions. The governing body of each of the 24 councils of governments (COGs) appoints the regional review committee members for their state planning region. The members of the regional review committee, including the presiding officer, are appointed at the pleasure of the respective governing body of the council of governments for the planning region. Each regional review committee consists of seven members. Composition of each regional committee shall reflect geographic diversity within the region, difference in population among eligible localities, and types of government (general law cities, home rule cities, and counties). ~~The chairperson of the committee is also appointed by the governor.~~ Members of the committee serve up to four-year ~~two-year staggered~~ terms. An individual may not serve as a member of a regional review committee while serving as a member of the State Community Development Review Committee.

(b) No Change.

(c) General requirements. In the performance of its responsibilities, each regional review committee shall comply with all federal and state laws and regulations relating to the administration of community development block grant nonentitlement area funds including, but not limited to, requirements of this subchapter, the scoring procedures specified in the current Regional Review Committee Guidebook, and the procedures established by the regional review committee under the TxCDBG.

(1) RRC Must Notify Applicants of Public Hearing to Adopt Local Project Priorities and Objective Scoring Factors.

(A) – (D) No Change.

(2) Quorum Required for Public Hearing. A public hearing of the RRC requires a quorum of seven members (regardless of status of term or elected office) appointed by the governing body the COG ~~governor~~. Each Regional Review Committee must establish a policy that prohibits voting by committee members who arrive late or do not attend the entire public hearing held to adopt local project priorities and objective scoring factors and other RRC procedures.

(3) – (4) No Change.

(d) – (l) No Change.

SUMMARY

Adoption of Amendments to Title 10, Chapter 255 of the Texas Administrative Code

Presented by Mark Wyatt*

DISCUSSION

The Board approved at the December 2008 meeting proposed amendments to Title 10, Chapter 255 of the Texas Administrative Code that would incorporate changes included in the 2009 Texas CDBG Action Plan that the ORCA Executive Committee approved in December 2007.

These proposed amendments were published on January 9, 2009 in the *Texas Register*. The comment period ends on February 8, 2009. We have received no comments as January 20, 2009 and anticipate none will be received because this amendment implements the 2009 Action Plan that has been adopted. However, if any comments in opposition to the proposed amendment are received after the Board meeting, we will bring the comments back for Board consideration prior to publishing the amended rules.

RECOMMENDATION

Staff recommends that the Board adopt the amendments as proposed under Title 10, Chapter 255 of the Texas Administrative Code and to authorize staff to provide notification to the Texas Register; provided no comments in opposition are received by the due date.

RURAL DEFINITION

Non-entitlement cities with populations under 50,000 and counties under 200,000.

***Should a Board member have questions concerning this agenda item, please contact Mr. Wyatt at 512-936-6725 (mwyatt@orca.state.tx.us)**

PROPOSED RULES

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 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

The Office of Rural Community Affairs (Office) proposes the amendments to §§255.1, 255.2, 255.4, 255.5, 255.8, 255.9, 255.11 and 255.17, and the repeal of §§255.3, 255.10, and 255.12 - 255.16 for the Community Development Block Grant (CDBG) non-entitlement area funds.

The amendments are proposed to specify criteria contained within the 2009 Action Plan. The repeal is proposed to delete rules that are no longer necessary.

Charles S. (Charlie) Stone, Executive Director of the Office, has determined that for the first five-year period the proposal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal and amended sections as proposed.

Mr. Stone has also determined that for each year of the first five-year period the proposal is in effect the public benefit as a result of enforcing the repeal and amended sections will be the equitable allocation of CDBG non-entitlement area funds to eligible units of general local government in Texas. There will be no cost to small business or individuals.

Comments on the proposal may be submitted to Mark Wyatt, Director of Community Development, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711, telephone: (512) 936-6701. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

10 TAC §§255.1, 255.2, 255.4, 255.5, 255.8, 255.9, 255.11, 255.17

The amendments are proposed under §487.052 of the Texas Government Code, which provides the Board with the authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

§255.1. General Provisions.

(a) Definitions and abbreviations. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Application--A written request for Texas Community Development Block Grant Program (TxCDBG) funds in the format required by the Office or by the TDA for Texas Capital Fund (TCF) applications.

(3) - (18) (No change.)

(b) Overview--Community Development Block Grant nonentitlement area funds are distributed by the TxCDBG to eligible units of general local government in the following program areas:

(1) - (6) (No change.)

~~[(7) Young v. Martinez fund (discontinued after 2003 program year);]~~

~~[(8) housing fund (discontinued after 2004 program year);]~~

~~[(9)] small towns environment program fund;~~

~~[(10) microenterprise fund (program income);]~~

~~[(11) small business fund (program income);]~~

~~[(12) section 408 loan guarantee pilot program;]~~

~~[(13) community development supplemental fund;]~~

~~[(14) non-border colonia fund;]~~

~~[(15)] renewable energy demonstration pilot program.~~

(c) Types of applications.

(1) Single jurisdiction applications. An applicant may submit one application per TxCDBG fund, as outlined in subsection (b) of this section, on its own behalf, or as a participant in a multi-jurisdictional application, per funding cycle (except as specified for the TCF, community development fund, housing fund, colonia fund, and small towns environment program fund).

(A) - (B) (No change.)

~~[(C) A county may submit a single jurisdiction application for a housing rehabilitation program that includes the rehabilitation of housing units in unincorporated areas and incorporated cities located in the county. The housing units that are rehabilitated under the county program must be located in unincorporated areas and in each incorporated city that is included as a participant in the county housing rehabilitation program. If a county submits a housing rehabilitation program application that includes the rehabilitation of housing units in incorporated cities, then the county cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TxCDBG fund category.]~~

~~[(D)] An application from an eligible city or county for a project that would primarily benefit another city or county that was not meeting the TxCDBG application threshold requirements would be considered ineligible.~~

(2) Multi jurisdiction applications. Subject to each participating community satisfying the application requirements of the Tx-CDBG fund under which the application is submitted and this paragraph, an application will be accepted from two or more units of general local government if the application clearly demonstrates that the proposed activities will mutually benefit the residents of the communities applying for funds. A multi-jurisdiction application solely for administrative convenience will not be accepted. Any community participating in a multi-jurisdiction application may not submit a single jurisdiction application under the project fund for which the multi-jurisdiction application was submitted. One of the participating communities must be primarily accountable to the Office and the TDA, in instances where the TCF is accessed, for financial compliance and program performance; however, all entities participating in the multi-jurisdiction application will be accountable for application threshold compliance. Only one unit of general local government may be the official applicant and this applicant must enter into a legally binding cooperation agreement with each participant that incorporates TxCDBG requirements. A proposed project which is located in more than one jurisdiction or in which beneficiaries from more than one jurisdiction will be counted must be submitted as a multi-jurisdiction application (except as specified for the TCF and single jurisdiction applications described in paragraph (1)(A) - (C) [(D)] of this subsection).

(d) - (e) (No change.)

(f) Citizen Participation.

(1) (No change.)

(2) Application requirements. Prior to submitting a formal application, an applicant for TxCDBG funding shall satisfy the following requirements.

(A) - (E) (No change.)

[(F)] The second public hearing for a housing infrastructure fund application must include a discussion with citizens on the proposed project, including the locations and the project activities, the amount of funds being requested, and the estimated amount of funds proposed for activities that will benefit low and moderate income persons. The published notice for this public hearing must include the location and hours when the application is available for review.]

(F) [(G)] Any public hearing held prior to submission of the application must be held after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(3) - (5) (No change.)

(g) Appeals. An applicant for funding under the TxCDBG may appeal the disposition of its application in accordance with this subsection.

(1) (No change.)

(2) The appeal must be submitted in writing to the TxCDBG of the Office no later than 30 days after the date the announcement of community development fund[, community development supplemental fund] and planning/capacity building fund contract awards is published in the *Texas Register*. In addition, timely appeals not submitted in writing at least five working days prior to the next regularly scheduled meeting of the state review committee will be heard at the subsequent meeting of the state review committee. The Office staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the state review committee at its next regularly scheduled meeting. The state review committee will make a final recommendation to the executive director of the Office. The decision of the executive director

of the Office is final. If the appeal concerns a TCF application, the appeal must be submitted in writing to the TDA no later than 10 days following the date of the notification letter of the denial. If the appeal concerns a disaster relief fund or urgent need fund application, the appeal must be submitted in writing to the Office no later than 30 days following the date of the notification letter of the denial. [If the appeal concerns a small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, housing fund, colonia fund or Young v. Martinez fund application, the appeal must be submitted in writing to the Office no later than 30 days after the date the announcement of contract awards is published in the *Texas Register*.] The staff of either the Office or the TDA, when appropriate, evaluates the appeal and may either concur with the appeal or disagree with the appeal and prepare an appeal file for consideration by the appropriate executive director. The executive director, of the agency with which the appeal was filed, then considers the appeal within 30 days and makes the final decision.

(3) In the event the appeal is sustained and the corrected scores would have resulted in project funding, the application is approved and funded. If the appeal concerning a community development fund or planning/capacity building fund application is rejected, the office notifies the applicant of its decision, including the basis for rejection after the meeting of the state review committee at which the appeal was considered. If the appeal concerns a [small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, Young v. Martinez fund,] TCF[, housing fund, colonia fund, disaster relief fund, small towns environment program fund, or urgent need fund] application, the applicant will be notified of the decision made by the appropriate executive director within ten days after the final determination by the executive director.

(4) - (5) (No change.)

(h) - (i) (No change.)

(j) False information. If an applicant provides false information in its community development fund or planning/capacity building fund application which has the effect of increasing the applicant's competitive advantage, the number of beneficiaries, or the percentage of low to moderate income beneficiaries, the Office refers the matter to the state review committee for disciplinary action. If the applicant provides false information in a [small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, Young v. Martinez fund,] colonia fund, disaster relief fund, [housing fund,] small towns environment program fund, or urgent need fund application, the Office staff shall make a recommendation for action to the executive director of the Office. If the applicant provides false information in a TCF application, TDA staff shall make a recommendation for action to the appropriate executive director. The state review committee makes a recommendation for action to the executive director of the Office at its next regularly scheduled meeting. Documentation of false information must be submitted at least ten business days prior to the next regularly scheduled meeting of the state review committee to be considered at that meeting. Recommendations that the state review committee or executive director may make include, but are not limited to:

(1) - (3) (No change.)

(k) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the Office and must follow the procedures prescribed in the instructions to the survey instrument. This option does not apply to applications submitted to the TCF.

(1) - (3) (No change.)

(4) The applicant must demonstrate a 100% effort in contacting households to be surveyed and obtain at least an 80% response rate for surveys [which include 150 or fewer beneficiary households or obtain at least a 70% response rate for surveys which include 151 or more beneficiary households].

(5) A survey that was completed on or after January 1, 2004 [January 1, 1993; or January 1, 1994; or January 1, 1995;] for a previous TxCDBG application may be accepted by the Office for a new application to the extent specified in the most recent application guide for the proposed project.

(l) - (r) (No change.)

(s) Funds recaptured from withdrawn awards. For an award that is withdrawn from an application, the Office follows different procedures for the use of those recaptured funds depending on the fund category where the award is withdrawn.

(1) - (2) (No change.)

~~[(3) Funds recaptured under the housing rehabilitation fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the housing rehabilitation fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition are then subject to the procedures described in subsection (4) of this section.]~~

(3) [(4)] Funds recaptured under the colonia construction fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(4) [(5)] Funds recaptured under the colonia planning fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(5) [(6)] Funds recaptured under the program year allocation for the colonia economically distressed areas program fund from the withdrawal of an award remain available to potential colonia economically distressed areas program fund applicants during that program year. Any funds remaining from the program year allocation that are not used to fund colonia economically distressed areas program fund applications within twelve months after the Office receives the federal letter of credit would remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

~~[(7) Funds recaptured under the housing infrastructure fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.]~~

(6) [(8)] Funds recaptured under the program year allocation for the disaster relief/urgent need fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(7) [(9)] Funds recaptured under the small towns environment program fund (STEP) from the withdrawal of an award will be made available in the next round of STEP competition following the withdraw date in the same program year. If the withdrawn award had been made in the last of the two competitions in a program year, the funds would go to the next highest scoring applicant in the same STEP competition. If there are no unfunded STEP applicants, then the recaptured funds would be available for other TxCDBG fund categories. Any unallocated STEP funds are subject to the procedures described in subsection (l) of this section.

~~[(10) Funds recaptured under the microenterprise loan fund from the withdrawal of an award are subject to the procedures described in subsection (4) of this section.]~~

~~[(11) Funds recaptured under the small business loan fund from the withdrawal of an award are subject to the procedures described in subsection (4) of this section.]~~

(8) [(12)] Funds recaptured under the Texas Capital Fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

~~[(13) Funds recaptured under the community development supplemental fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the community development supplemental fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum community development supplemental fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in subsection (4) of this section. This process would also apply to an application under the community development supplemental fund that received a portion of its funds from community development marginal funds. The community development marginal funds would be provided to the replacement application.]~~

(9) [(14)] For both the community development fund [and community development supplemental fund (including applications funded with a portion from each of the two funds)], if there are no remaining unfunded eligible applications in the region from the same biennial application period to receive the withdrawn funding, then the withdrawn funds are considered as deobligated funds, subject to the procedures described in subsection (l) of this section.

~~[(15) Funds recaptured under the Non-border Colonia Fund from the withdrawal of an award remain available to potential Non-Border Colonia Fund applicants during that program year and, if~~

unallocated within the non-border colonia fund; may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures described in subsection (f) of this section.]

(1) - (aa) (No change.)

§255.2. Community Development Fund.

(a) General provisions. This fund covers housing, public facilities, and public service projects. Eligible units of general local government may apply for funding of a single purpose project such as housing assistance, sewer improvements, water improvements, drainage, roads, or community centers, or for a multi-purpose project which consists of any combination of such eligible activities. An application submitted for the community development fund can receive a grant from the community development fund regional allocation and/or from the community development supplemental fund regional allocation.

(1) An applicant may not submit a single jurisdiction application or be a participant in a multi-jurisdiction application under this fund and also submit a single jurisdiction application or be a participant in a multi-jurisdiction application submitted under any other TxCDBG fund category at the same time if the proposed activity under each application is the same or substantially similar. [However, an application submitted for the community development fund is also considered for the regional allocation for the community development supplemental fund.]

(2) - (3) (No change.)

(b) Funding cycle. This fund is allocated to eligible units of general local government on a biennial basis for the 2009 and 2010 [2007 and 2008] program years pursuant to regional competitions held for the 2009 [2007] program year applicants. Applications for funding must be received by the TxCDBG by the dates and times specified in the most recent application guide for this fund.

(c) Allocation plan.

(1) (No change.)

(2) Each state planning region is provided with a 2009 [2007] program year community development fund target allocation [and an additional 2007 program year community development supplemental fund target allocation] and a 2010 [2008] program year community development fund target allocation [and an additional 2008 program year community development supplemental fund target] allocation for applications in the region that are ranked through the 2009 [2007] program year regional competitions in accordance with a shared scoring system involving the Office and the regional review committees. [The regional allocation formula for the community development supplemental fund is described in §255.15(e) of this title (relating to Community Development Supplemental Fund).]

(A) The community development fund regional allocations for the first and second years of the biennial process are awarded first in each region based on the community development fund selection criteria that includes each regional review committee and the Office (10% of maximum possible score for each RRC) scoring criteria. [the 700 available points that are awarded by the Office (350 points) and each regional review committee (350 points).] Where the remainder of the 2009 [2007] program year community development fund target allocation is insufficient to completely fund the next highest ranked applicant, the applicant receives complete funding of the original grant request through either 2009 [2007] and 2010 [2008] program year funds. [The [Where the remainder of the 2006 program year community development fund target allocation is insufficient to completely fund the next ranked application; the Office works with the affected applicant to determine whether partial funding is feasible. If partial funding is not feasible; the] remaining funds from all the target allocations are pooled

to fund projects from among the highest ranked, unfunded applications from each of the 24 state planning regions. Selection criteria for such applications will consist of the selection criteria scored by the Office under this fund. Marginal applicants' community distress scores are recomputed based on the applicants competing in the marginal pool competition only.

(B) Due to the two-year funding cycle proposed for program years 2009 and 2010, a Community Development Fund pooled marginal competition will not be conducted for program year 2009. A pooled marginal competition may be conducted for program year 2010 using available funds if the State's 2010 allocation is not decreased significantly from the State's estimated 2010 Community Development allocation. All applicants whose marginal amount available is under \$75,000 will automatically be considered under this competition. When the marginal amount left in a regional allocation is equal to or above the TxCDBG grant minimum of \$75,000, the marginal applicant may scale down the scope of the original project design, and accept the marginal amount, if the reduced project is still feasible. Alternatively, such marginal applicants may choose to compete under the pooled marginal fund competition for the possibility of full project funding. This fund consists of all regional marginal amounts of less than \$75,000, any funds remaining from regional allocations where the number of fully funded eligible applicants does not utilize a region's entire allocation and the contribution of marginal amounts larger than \$75,000 from those applicants opting to compete for full funding rather than accept their marginal amount. The scoring factors used in this competition are the TxCDBG Community Development Fund factors scored by TxCDBG staff with the following adjustments:

(i) Past Selection (10 points)--Ten (10) points are awarded to each applicant that did not receive a 2007 or 2008 Community Development Fund or Community Development Supplemental Fund contract award;

(ii) Past Performance (25 points)--Up to 25 points;

(iii) Community Distress (55 points)--55 Points Maximum (Percentage of persons living in poverty 25 points; Per Capita Income 20 points; Unemployment Rate 10 points).

[(B) The remaining applicants in the region that are not recommended to receive awards from the community development fund 2007 and 2008 regional allocations are then ranked to receive the community development supplemental fund regional allocations for the first and second years of the biennial process based on the community development supplemental fund selection criteria that includes the 360 available points that are awarded by the Office (10 points based on the applicant's past performance on previously awarded TxCDBG contracts) and each regional review committee (350 points).]

[(C) The community development fund marginal funds available from the 2008 regional allocation may be used to fund an application that is recommended to receive only a portion of the original grant request from the community development supplemental fund regional allocation.]

[(D) If there are insufficient funds available from the first year's community development supplemental fund regional allocation to fully fund an application; then the applicant may accept the amount available or wait for full funding in the second year by combining the regional allocations available for the two years.]

[(E) If there are insufficient funds available from the 2005 and 2006 community development supplemental fund regional allocations; then any funds available from the 2006 community development fund regional allocation marginal funds may be used to fully fund the application. If marginal funds are not available to fully fund

the application; the applicant may accept the amount of the funds available or, if declined, the funds will be part of the marginal competition.]

(3) Each Regional Review Committee is encouraged to allocate a percentage or amount of its Community Development Fund allocation to housing projects and, for RRCs in eligible areas, non-border colonia projects proposed in and for that region. Under a set-aside, the highest ranked applications for a housing or non-border colonia activity, regardless of the position in the overall ranking, would be selected to the extent permitted by the housing or non-border colonia set-aside level. If the region allocates a percentage of its funds to housing and/or non-border colonia activities and applications conforming to the maximum and minimum amounts are not received to use the entire set-asides, the remaining funds may be used for other eligible activities. (Under a housing and/or non-border colonia set-aside process, a community would not be able to receive an award for both a housing or non-border colonia activity and an award for another Community Development activity during the biennial process. Housing projects/activities must conform to eligibility requirements in 42 U.S.C. Section 5305 and applicable HUD regulations.)

~~[(3) Each regional review committee may allocate approximately 8% or a greater or lesser percentage, of its community development fund allocation to housing projects proposed in and for that region. Under a housing allocation, the highest ranked applications for housing activities, regardless of the position in the overall ranking, would be selected to the extent permitted by the housing allocation level. If the regional review committee allocates a percentage the region's funds to housing and applications conforming to the maximum and minimum amounts are not received to use the entire housing allocation, the remaining funds may be used for other eligible activities.]~~

(d) Selection procedures.

(1) Prior to the submission deadline specified in the most recent application guide for this fund, each eligible unit of general local government may submit one application to the Office for funding under the [combined] community development fund [and community development supplemental fund] regional allocations. Two copies of the application must be submitted to the Office. [Each applicant must also provide at least one copy of its application to the applicant's regional review committee within three weeks after the Office submission deadline.]

(2) (No change.)

(3) Each Regional Review Committee is responsible for determining local project priorities and objective factors for all its scoring components based on public input. The RRC shall establish the numerical value of the points assigned to each scoring factor and determine the total combined points for all RRC scoring factors. The RRCs are responsible for convening public hearings to discuss and select the objective scoring factors that will be used to score applications at the regional level. The public must be given an opportunity to comment on the priorities and the scoring criteria considered. The final selection of the scoring factors is the responsibility of each RRC. Each RRC shall develop a Regional Review Committee Guidebook, in the format provided by TxCDBG staff, to notify eligible applicants of the objective scoring factors and other RRC procedures for the region. The RRC must clearly indicate how responses would be scored under each factor and use data sources that are verifiable to the public. After the RRC's adoption of its scoring factors, the score awarded to a particular application under any RRC scoring factor may not be dependent upon an individual RRC member's judgment or discretion. (This does not preclude collective RRC action that the state TxCDBG has approved under any appeals process.)

(4) The RRC shall select one of the following entities to develop the RRC Guidebook, calculate the RRC scores, and provide other administrative RRC support: Regional Council of Governments (COG), or TxCDBG staff or TxCDBG designee, or A combination of COG and TxCDBG staff or TxCDBG designee.

(5) The RRC Guidebook should be adopted by the RRC and approved by TxCDBG staff at least 90 days prior to the application deadline. The selection of the entity responsible for calculating the RRC scores must be identified in the RRC Guidebook and must define the role of each entity selected. The Office shall be responsible for reviewing all scores for accuracy and for determining the final ranking of applicants once the RRC and TxCDBG scores are summed. The RRC is responsible for providing to the public the RRC scores, while the TxCDBG is responsible for publishing the final ranking of the applications.

~~[(3) Each regional review committee shall hold a scoring meeting in accordance with the procedures specified in the Office's regional review committee guidebook and in accordance with the procedures and priorities previously established by each regional review committee. Each regional review committee must provide every applicant within its region with an opportunity to make a presentation before the regional review committee. The regional review committee will then score the regional review committee scoring factors.]~~

~~[(4) Following the resolution of any appeals from actions of the regional review committees as specified in §255.8 of this title (relating to Regional Review Committees) the Office adds scores relating to community distress; benefits to low- and moderate-income persons; project impact; other considerations; and match to the regional review committees' scores to determine regional rankings. Scores on the factors in these categories are derived from standardized data from the U.S. Census Bureau; Texas Workforce Commission; and from information provided by the applicant.]~~

~~[(5) Following a final technical review, the Office staff presents the funding recommendations for the 2009 and 2010 [2007 and 2008] community development fund [and community development supplemental fund] regional allocations to the state review committee. Office staff makes a site visit to each of the applicants recommended for funding prior to the completion of contract agreements.~~

~~[(6) In consultation with the executive director and Tx-CDBG office staff, the state review committee reviews and approves grant and loan applications and associated funding awards of eligible counties and municipalities.~~

~~[(7) An applicant for a grant, loan, or award under a community development block grant program may appeal a decision of the state review committee by filing a complaint with the Board. The Board will hold a hearing on a complaint filed with the board and render a decision.~~

~~[(8) Upon announcement of the 2009 and 2010 [2007] program year contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.~~

~~[(9) Upon announcement of the 2006 program year contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of~~

the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.]

(e) Selection criteria. The following is an outline of the selection criteria used by the Office and the regional review committees for scoring applications under the community development fund. [Seven hundred points are available.]

(1) Regional Review Committee (RRC) Objective Scoring--Each Regional Review Committee is responsible for determining local project priorities and objective factors for all its scoring components based on public input.

(A) Maximum RRC Points Possible: The RRC shall establish the numerical value of the points assigned to each scoring factor and determine the total combined points for all RRC scoring factors.

(B) RRC Selection of the Scoring Factors: The RRCs are responsible for convening public hearings to discuss and select the objective scoring factors that will be used to score applications at the regional level. The public must be given an opportunity to comment on the priorities and the scoring criteria considered. The final selection of the scoring factors is the responsibility of each RRC.

(i) Each RRC shall develop a Regional Review Committee Guidebook, in the format provided by TxCDBG staff, to notify eligible applicants of the objective scoring factors and other RRC procedures for the region.

(ii) The RRC must clearly indicate how responses would be scored under each factor and use data sources that are verifiable to the public. After the RRC's adoption of its scoring factors, the score awarded to a particular application under any RRC scoring factor may not be dependent upon an individual RRC member's judgment or discretion. (This does not preclude collective RRC action that the state TxCDBG has approved under any appeals process.)

(2) State Scoring (TxCDBG Staff Scoring)--Other Considerations--Maximum Points--10% of Maximum Possible Score for Each RRC.

(A) Past Selection--Maximum Points--2% of Maximum Possible RRC Score for each region--are awarded to each applicant that did not receive a 2007 or 2008 Community Development Fund or Community Development Supplemental Fund contract award.

(B) Past Performance--Maximum Points--4% of Maximum Possible RRC Score for each region. An applicant can receive points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's most recent TxCDBG contract that has reached the end of the original contract period stipulated in the contract within the past 4 years (for CD/CDS contracts only the 2003/2004 and 2005/2006 cycle awards will be considered). The TxCDBG will also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. (Adjustments may be made for contracts that are engaged in appropriately pursuing due diligence such as bonding remedies or litigation to ensure adequate performance

under the TxCDBG contract.) The evaluation of an applicant's past performance will include the following:

(i) The applicant's completion of the previous contract activities within the original contract period.

(ii) The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports.

(iii) The applicant's submission of the required close-out documents within the period prescribed for such submission.

(iv) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.

(v) The applicant's timely response to audit findings on previous TxCDBG contracts.

(vi) The expenditure timeframes on the applicable TxCDBG contracts.

(C) Benefit To Low/Moderate-Income (LMI) Persons--Applications that meet the Low and Moderate Income National Objective for each activity (51 percent low/moderate-income benefit for each activity within the application) will receive 2% of the Maximum Possible RRC Score for each region.

(D) Cost per Household (CPH)--The total amount of TxCDBG funds requested by the applicant is divided by the total number of households benefiting from the application activities to determine the TxCDBG cost per household. (Use pro rata allocation for multiple activities.)--Up to 2% of the Maximum RRC Score for each region.

(i) Cost per household is equal to or less than \$8,750--2%.

(ii) Cost per household is greater than \$8,750 but equal to or less than \$17,500--1.75%.

(iii) Cost per household is greater than \$17,500 but equal to or less than \$26,500--1.25%.

(iv) Cost per household is greater than \$26,500 but equal to or less than \$35,000--0.5%.

(v) Cost per household is greater than \$35,000--0%.

(E) When necessary, a weighted average is used to score to applications that include multiple activities with different beneficiaries. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for administration, a percentage of the total TxCDBG construction and engineering dollars for each activity is calculated. Administration dollars requested is applied pro-rata to these amounts. The percentage of the total TxCDBG dollars for each activity is then multiplied by the appropriate score and the sum of the calculations determines the score. Related acquisition costs are applied to the associated activity.

(F) Maximum State points--the calculated maximum score is rounded to a whole integer, with Past Selection, Past Performance, and LMI being rounded to a whole integer and CPH points being the difference.

(G) The RRC may not adopt scoring factors that directly negate or offset these state factors.

(I) If the Regional Review Committee for a region fails to adopt an Objective Methodology for the Program Year 2009 and 2010 Community Development Fund the following scoring criteria will apply: The RRC's Project Priorities taken from the TxCDBG-approved

RRC Scoring Guidelines for the region for the 2007-2008 CD/CDS cycle.

(1) Regional Review Committee Project Priorities (100 points) The RRC's Project Priorities taken from the TxCDBG-approved RRC Scoring Guidelines for the region for the 2007-2008 CD/CDS cycle. (Adjusted if necessary for an objective methodology as described in the PY 2009 TxCDBG Action Plan.)

(2) [(4)] Community distress (total--55 points). All community distress factor scores are based on the population of the applicant. An applicant that has 125% or more of the average of all applicants in its region of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in its region on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in its region on the per capita income factor will receive the maximum number of points available for that factor:

- (A) percentage of persons living in poverty--25
- (B) per capita income--20
- (C) unemployment rate--10

(3) [(2)] Benefit to low- and moderate-income persons (total--20 [40] points). Applications that meet the Low and Moderate Income National Objective for each activity (51 percent low/moderate-income benefit for each activity within the application) will receive 20 points. [An application in which at least 60% of the Texas Community Development Block Grant Program funds requested benefit low and moderate income persons receives 40 points.]

(4) [(3)] Project impact (total--175 points).

(A) Information submitted in the application or presented to the Regional Review Committees is used by a committee composed of TxCDBG staff to generate scores on the Project Impact factor. Multi-activity projects which include activities in different scoring ranges receive a combination score within the possible range. Each application is scored by a committee composed of TxCDBG staff. Each committee member separately evaluates an application and assigns a score within a predetermined scoring range based on the application activities. The separate scores are then totaled and the application is assigned the average score. The scoring ranges used for Project Impact scoring are: [Each application is scored within a point range based on the application activities. Multi-activity projects which include activities in different scoring ranges will receive a combination score within the possible range. Information submitted in the application or presented to the regional review committees is used by a committee composed of staff of the Office to generate scores on this factor. The point ranges used for project impact scoring are as follows:]

- (i) water activities, sewer activities, and housing activities (145 to 175 points);
- (ii) eligible public facilities in a defense economic readjustment zone (145 to 175 points);
- (iii) street paving, drainage, flood control and handicapped accessibility activities (130 to 160 points);
- (iv) fire protection, health clinic activities, and facilities providing shelter for persons with special needs (125 to 145 points);

(v) community center, senior citizens center, social services center, demolition/clearance, and code enforcement activities (115 to 135 points);

(vi) gas facilities, electrical facilities, and solid waste disposal activities (110 to 130 points);

(vii) access to basic telecommunications, jail facilities and detention facilities (105 to 125 points);

(viii) all other eligible activities (85 to 115 points).

(B) Other factors that will be evaluated by Office staff in the assignment of project impact scores within the point ranges for activities include, but are not limited to, the following:

(i) each application is scored based on how the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction;

(ii) projects that address basic human needs such as water, sewer, and housing generally are scored higher than projects addressing other eligible activities;

(iii) projects that provide a first-time public facility or service generally receive a higher score than projects providing an expansion or replacement of existing public facilities or services;

(iv) public water and sewer projects that provide a first-time public facility or service generally receive a higher score than other eligible first-time public facility or service projects;

(v) projects designed to bring existing services up to at least the state minimum standards as set by the applicable regulatory agency are given additional consideration;

(vi) For water and sewer projects addressing state regulatory compliance issues, the extent to which the issue was unforeseen;

(vii) projects designed to address drought-related water supply problems are generally given additional consideration;

(viii) water and sewer projects that provide first-time water or sewer service through a privately-owned for-profit utility or an expansion/improvement of the existing water or sewer service provided through a privately-owned for-profit utility may, on a case-by-case basis, receive less consideration than the consideration given to projects providing these services through a public nonprofit organization.

(ix) Projects designed to conserve water usage may be given additional consideration.

(x) Water and sewer projects from applicants that demonstrate a long term commitment to reinvestment in the system and sound management of the system may be given additional consideration (including those that have remained in compliance with health and Texas Commission on Environmental Quality (TCEQ) system requirements).

(xi) Consideration will be given to those water and sewer systems that have agreed to undertake improvements to their systems that TCEQ's recommendation but are not under an enforcement order because of this agreement.

(xii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed.

(xiii) Projects that use renewable energy technology for not less than 10% of the total energy requirements (excluding the purchase of energy from the electric grid that was produced with renewable energy).

(5) [(4)] Matching Funds (total--60 points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored depends on the project type and the beneficiary population served. If the project benefits residents of the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the residents of the entire unincorporated area of the county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the participating applicants according to the 2000 census. Applications for housing rehabilitation and for affordable new permanent housing for low- and moderate-income persons receive the 60 points without including any matching funds. This exception is for housing activities only. Sewer or water service line/connections are not counted as housing rehabilitation. Demolition/clearance and code enforcement, when done in the same target area are counted as part of the housing rehabilitation activity. When demolition/clearance and code enforcement are proposed without housing rehabilitation activities, then the match score is still based on actual matching funds committed by the applicant. Applications which include additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities. Program funds cannot be used to install street/road improvements in areas that are not currently receiving water or sewer service from a public or private service provider unless the applicant provides matching funds equal to at least 50% of the total construction cost budgeted for the street/road improvements. This requirement will not apply when the applicant provides assurance that the street/road improvements proposed in the application will not be impacted by the possible installation of water or sewer lines in the future because sufficient easements and rights-of-way are available for the installation of such water or sewer lines. The terms used in this paragraph are further defined in the current application guide for this fund.

(A) Applicants with populations equal to or less than 1,500 according to the 2000 census:

- (i) match equal to or greater than 5.0% of grant request--60 points;
- (ii) match at least 4.0% but less than 5.0% of grant request--40 points;
- (iii) match at least 3.0% but less than 4.0% of grant request--20 points;
- (iv) match at least 2.0% but less than 3.0% of grant request--10 points;
- (v) match less than 2.0% of grant request--0 points.

(B) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

- (i) match equal to or greater than 10% of grant request--60 points;
- (ii) match at least 7.5% but less than 10% of grant request--40 points;

(iii) match at least 5.0% but less than 7.5% of grant request--20 points;

(iv) match at least 2.5% but less than 5.0% of grant request--10 points;

(v) match less than 2.5% of grant request--0 points.

(C) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(i) match equal to or greater than 15% of grant request--60 points;

(ii) match at least 11.5% but less than 15% of grant request--40 points;

(iii) match at least 7.5% but less than 11.5% of grant request--20 points;

(iv) match at least 3.5% but less than 7.5% of grant request--10 points;

(v) match less than 3.5% of grant request--0 points.

(D) Applicants with populations over 5,000 according to the 2000 census:

(i) match equal to or greater than 20% of grant request--60 points;

(ii) match at least 15% but less than 20% of grant request--40 points;

(iii) match at least 10% but less than 15% of grant request--20 points;

(iv) match at least 5.0% but less than 10% of grant request--10 points;

(v) match less than 5.0% of grant request--0 points.

(6) [(5)] Other considerations (total--40 [20] points). An applicant receives up to 40 [20] points on the following three factors.

(A) Past Selection (10 points)--10 points are awarded to each applicant that did not receive a 2007 or 2008 Community Development Fund or Community Development Supplemental Fund contract award. [Ten of the 20 points available are awarded to applicants that did not receive a community development fund or a housing rehabilitation fund contract award during the 2005 and 2006 program years.]

(B) Past Performance (total--20 points). An applicant can receive from thirty (30) to zero (0) points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's most recent TxCDBG contract that has reached the end of the original contract period stipulated in the contract within the past 4 years. The TxCDBG will also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on Tx-CDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include the following: [An applicant receives from zero to ten points based on the applicant's past performance on previously awarded Tx-CDBG contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. Tx-CDBG staff may also assess the applicant's performance on existing TxCDBG contracts that have

not reached the end of the original contract period. An applicant that has never received a TxCDBG grant award will automatically receive these points. TxCDBG staff will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance on TxCDBG contracts after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:]

(i) The applicant's completion of the previous contract activities within the original contract period.

(ii) The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports.

(iii) [(ii)] The applicant's submission of the required close-out documents within the period prescribed for such submission.

(iv) [(iii)] The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.

(v) [(iv)] The applicant's timely response to audit findings on previous TxCDBG contracts.

[(v)] The applicant's submission of all contract reporting requirements such as quarterly progress reports, certificates of expenditures, and project completion reports.]

(vi) The expenditure timeframes on the applicable TxCDBG contracts.

(C) Cost per Household (total--10 points). The total amount of TxCDBG funds requested by the applicant is divided by the total number of households benefiting from the application activities to determine the TxCDBG cost per beneficiary. (Use pro rata allocation for multiple activities.) When necessary, a weighted average is used to score to applications that include multiple activities with different beneficiaries. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for administration, a percentage of the total TxCDBG construction and engineering dollars for each activity is calculated. Administration dollars requested is applied pro-rata to these amounts. The percentage of the total TxCDBG dollars for each activity is then multiplied by the appropriate score and the sum of the calculations determines the score. Related acquisition costs are applied to the associated activity.

(i) Cost per beneficiary is equal to or less than \$8,750--10 points.

(ii) Cost per beneficiary is greater than \$8,750 but equal to or less than \$17,500--8 points.

(iii) Cost per beneficiary is greater than \$26,500 but equal to or less than \$26,500--5 points.

(iv) Cost per beneficiary is greater than \$26,500 but equal to or less than \$35,000--2 points.

(v) Cost per beneficiary is greater than \$35,000--0 points.

[(6) Regional scoring factors (total--350 points). Each regional review committee shall use the following three factors to score applications in its region:]

[(A) Project priorities. Each regional review committee shall rank and assign points to categories of eligible activities based on the priority of such projects in the region. The first priority shall receive at least 100 points.]

[(B) Local effort. A minimum of 75 points shall be made available based on definitions and criteria adopted by each regional review committee. The regional review committee must establish the methods its members will use to score this factor, consistent with HUD regulations as determined by TxCDBG.]

[(C) Merits of the project. A maximum of 175 points shall be awarded based on definitions and criteria adopted by each regional review committee. The regional review committee must establish the methods its members will use to score this factor, consistent with HUD regulations as determined by TxCDBG.]

[(F) Project impact scoring. Formations submitted in the application and information presented to each Regional Review Committee and the TxCDBG will be used by ORCA staff to generate scores on the Project Impact factor. The maximum Project Impact score is 175 points and an applicant can receive a score as low as 85 points. Scoring ranges have been established for eligible activities. A weighted average is used to assign scores to applications that include activities in the different Project Impact scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction and acquisition dollars for each activity will be calculated. The percentage of the total TxCDBG construction dollars for each activity will then be multiplied by the appropriate Project Impact point level. The sum of these calculations determines the composite Project Impact score.]

[(1) Supplemental information may be presented orally to the RRC during the RRC scoring meeting. But any additional information that an applicant wishes to submit for Project Impact scoring consideration, must be submitted in a written/printed format. Additional written/printed information presented to the RRC or the TxCDBG will be accepted up to the date of each RRC scoring meeting. The additional information must be presented to the TxCDBG representative attending the RRC scoring meeting or received in the TxCDBG office by the date of the RRC scoring meeting. Information received by the RRC or the TxCDBG after the date of the RRC scoring meeting will not be considered by the TxCDBG in the scoring of this factor.]

[(2) The score for water and sewer activities that benefit privately-owned for-profit water and sewer systems will be reduced by five points, except for instances when a Project Impact score is specifically assigned to a water or sewer activity that is provided through a privately-owned for-profit utility.]

[(3) Water, sewer and housing activities--145 to 175 points.]

[(A) Water activities:]

[(i) First-time public water service to an area that includes more than 25 new residential connections--169 points]

[(ii) Project addressing situation that meets TxCDBG urgent need criteria with back-up letter from the Texas Department of State Health Services or other applicable state agency citing the conditions creating the threat to public health and safety--169 points]

[(iii) First-time public water service to an area that includes 11 to 25 new residential connections--167 points]

[(iv) Applicant is addressing deficiencies cited in an active Agreed Order/Enforcement Order with fines included (application must indicate whether cited violation has been resolved)--164 points]

[(v) Applicant is addressing deficiencies cited in an active Agreed Order/Enforcement Order without fines included (appli-

ation must indicate whether cited violation has been resolved)—164 points]

{(vi)} First-time public water service to an area that includes 10 or fewer new residential connections—164 points]

{(vii)} Addressing drought conditions through additional water supply or water storage and water system is on the TCEQ drought watch list within the last 4 months prior to the application due date; and the supply problems are not related to substantial water loss from deteriorated lines (must include with the application the notice to citizens and the criteria used to be on the drought list)—161 points]

{(viii)} First-time water service to an area through a privately-owned for-profit—161 points]

{(ix)} Water supply/treatment improvements that are still needed to meet state minimum standards cited in the most recent TCEQ water system inspection letter—165 points]

{(x)} Water storage improvements that are still needed to meet state minimum standards cited in the most current TCEQ water system inspection letter—158 points]

{(xi)} Replacing undersized water lines and removing the presence of lead, or contamination that has a regulatory standard to meet state minimum water pressure standards cited in the most recent TCEQ water system inspection letter and the conditions cited still exist—158 points]

{(xii)} Addressing drought conditions by replacing water lines that contribute to a significant loss of water supply; provided the water supply loss is documented by the applicant and the water system is on the current TCEQ drought watch list (within the last 4 months prior to the application due date. Must include with the application the notice to citizens and criteria used to be on the drought list)—157 points]

{(xiii)} Water storage improvements to meet state minimum standards; documented through independent quantifiable information; and the conditions still exist—155 points]

{(xiv)} Water supply/treatment improvements to meet state minimum standards; documented through independent quantifiable information; and the conditions still exist—155 points]

{(xv)} Replacement of water lines with larger diameter water lines to meet minimum state standards for water pressure cited in the most recent TCEQ water system inspection letter, and the conditions cited still exist—155 points]

{(xvi)} Replacement of water lines with larger diameter water lines to meet minimum state standards for water pressure and/or number of connections and documented through independent quantifiable information; and the conditions still exist—153 points]

{(xvii)} Water supply, storage or treatment improvements without independent quantifiable information or a TCEQ water system inspection letter documenting that the activity is addressing state minimum standards—149 points]

{(xviii)} Replacement of water lines with larger diameter water lines to improve service without independent quantifiable information or a TCEQ water system inspection letter documenting that the replacement activity is addressing state minimum standards—148 points]

{(xix)} Replacement of water lines with the same diameter size water lines—147 points]

{(xx)} Water service problems associated with written complaints not addressed elsewhere in this section—146 points]

{(xxi)} Other eligible water activities—145 points]

{(xxii)} Water supply is defined as reservoirs (lakes (surface water); aquifers) or ground storage reservoirs; wells; or an independent wholesale supplier that feeds into treatment facilities (conveyance to plant).]

{(B)} Additional subjective considerations for water activities.}]

{(i)} Consideration will be given to those water systems that have agreed to undertake improvements to their systems at TCEQ's recommendation but are not under an enforcement order because of this agreements—1 to five points]

{(ii)} How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction. First-time service would score high in the range—1 to 5 points]

{(iii)} Water projects from applicants that demonstrate a long-term commitment to reinvestment in the system and sound management of the system may be given additional consideration (including those that have remained in compliance with health and TCEQ system requirements). Installation of water lines to loop the water system would be considered; however it would not receive points if also scored based on TCEQ enforcement or citations. For water projects addressing state regulatory compliance issues; the extent to which the issue was unforeseen (based on information included in state regulatory documentation or notifications to the applicant) will be considered—1 to 3 points]

{(iv)} Projects designed to conserve water usage may be given additional consideration—2 points if addressing drought conditions and on the TCEQ drought watch list (within the last 3 months prior to the application due date)—1 to 2 points]

{(v)} Projects that use renewable energy technology for not less than 10% of the total energy requirements; (excluding the purchase of energy from the electric grid that was produced with renewable energy)—2 points]

{(vi)} Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)—1 point]

{(C)} Sewer activities.}]

{(i)} First-time public sewer service to an area that includes more than 25 new residential connections—169 points]

{(ii)} Project addressing situation that meets TxCDBG urgent need criteria with back-up letter from the Texas Department of State Health Services or other applicable state agency citing the conditions creating the threat to public health and safety—169 points]

{(iii)} Applicant is addressing deficiencies cited in an active Agreed Order/Enforcement Order with fines included—167 points]

{(iv)} First-time public sewer service to an area that includes 11 to 25 new residential connections—167 points]

{(v)} First-time public sewer service to an area that includes 10 or fewer new residential connections—164 points]

{(vi)} Applicant is addressing deficiencies cited in an active Agreed Order/Enforcement Order without fines included—164 points]

[(vii)] Installation of septic tanks or on-site sewer facilities to provide first-time sewer service—162 points]

[(viii)] Applicant is addressing deficiencies cited in the most recent TCEQ sewer system notice of violations letter and the conditions cited still exist—156 points]

[(ix)] First-time sewer service to an area through a privately-owned for-profit utility—161 points]

[(x)] Applicant is expanding the sewer treatment plant in response to the most recent TCEQ letter stating that sewer system has reached 90% of treatment capacity and the conditions cited still exist—161 points]

[(xi)] Applicant is expanding the sewer treatment plant in response to the most recent TCEQ letter stating that sewer system has reached 75% of treatment capacity and the conditions cited still exist—158 points]

[(xii)] Replacing lift stations to address inflow and infiltration problems in response to the most recent TCEQ notice of violations letter citing the problem or documented through independent quantifiable information and the conditions cited still exist—157 points]

[(xiii)] Replacement of sewer lines with new sewer lines to address sewer system overflows; blocked sewer lines; replacement of lift stations with new lift stations to address sewer system unauthorized discharges rather than inflow and infiltration problems or septic tank replacement to address problems based on independent quantifiable information—154 points]

[(xiv)] New sewer treatment plant or expansion of existing sewer treatment plant with independent quantifiable information to provide capacity for first-time sewer services in the same application—164 points]

[(xv)] Replacement of sewer lines with new sewer lines to address sewer system overflows; blocked sewer lines; or inflow and infiltration problems or septic tank replacement to address problems without independent quantifiable information or without a TCEQ letter documenting the problems still exist—150 points]

[(xvi)] Replacement of lift stations with new lift stations without independent quantifiable information or without a TCEQ letter documenting the problems still exist—148 points]

[(xvii)] New sewer treatment plant or expansion of the existing sewer treatment plant without independent quantifiable information or without a TCEQ letter documenting need for the new plant (one point extra if permit has been obtained)—149 points]

[(xviii)] Sewer service problems associated with written complaints not covered elsewhere in this section—146 points]

[(xix)] Other eligible sewer activities—145 points]

[(xx)] New treatment facilities needed to replace failing treatment structure—162 points]

[(xxi)] Installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues—157 points]

[(xxii)] New sewer treatment plant or expansion of the existing sewer treatment plant with independent quantifiable information or with a TCEQ letter documenting the need for the new plant (one point extra if permit is obtained)—157 points]

[(D)] Additional subjective considerations for sewer/wastewater activities.]

[(i)] Consideration will be given to those sewer systems that have agreed to undertake improvements to their systems at TCEQ's recommendation but are not under an enforcement order because of this agreement—1 to 5 points]

[(ii)] How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction may be given additional consideration. First-time service would score high in the range—1 to 7 points]

[(iii)] Sewer projects from applicants that demonstrate long-term commitment to reinvestment in the system and sound management of the system may be given additional consideration (including those that have remained in compliance with health and TCEQ system requirements). The applicant would not receive points of this criterion is scored under a category for TCEQ enforcement or citations. For sewer projects addressing state regulatory compliance issues, the extent to which the issue was unforeseen (based on information included in state and regulatory documentation or notifications to the applicant) may also be considered—2 points]

[(iv)] Projects that use renewable energy technology for not less than 10% of the total energy requirements; (excluding the purchase of energy from the electric grid that was produced with renewable energy)—2 points]

[(v)] Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdiction application can receive a total of one point)—1 point]

[(E)] Housing activities.]

[(i)] Housing rehabilitation addressing all housing code violations and housing guidelines will include preference to making housing units accessible for persons with disabilities—166 points]

[(ii)] Housing rehabilitation addressing all housing code violations that do not include a preference to making housing units accessible for persons with disabilities—164 points]

[(iii)] Construction of new housing, when eligible, for low and moderate income persons—146 points]

[(iv)] Provision of direct assistance (such as down-payment assistance) to facilitate and expand homeownership among persons of low and moderate income—162 points]

[(v)] Acquisition of existing housing units that will be renovated and then made available to low and moderate income persons—161 points]

[(vi)] Housing rehabilitation addressing all housing code violations that include code enforcement and/or demolition clearance activities and housing guidelines will include a preference to making housing units accessible for persons with disabilities—169 points]

[(vii)] Housing rehabilitation that is not addressing all housing code violations and housing guidelines will include preference to making housing units accessible for persons with disabilities—153 points]

[(viii)] Housing rehabilitation that is not addressing all housing code violations—149 points]

[(ix)] Other eligible housing activities—145 points]

[(F)] Additional subjective considerations for housing activities.]

[(i)] How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction—1 to 5 points]

[(ii)] Projects that use renewable energy technology for not less than 10% of the total energy requirements (excluding the purchase of energy from the electric grid that was produced with renewable energy)—1 point]

[(iii)] Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdiction application can receive a total of one point)—1 point]

[(4)] Eligible public facilities located in a Defense Economic Readjustment Zone—145 to 175 points—]

[(A)] Public facilities projects located in a Defense Economic Readjustment Zone—169 points]

[(B)] Additional subjective consideration for eligible facilities located in a Defense Economic Readjustment Zone—]

[(i)] How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction—1 to 5 points]

[(ii)] Projects that use renewable energy technology for not less than 10% of the total energy requirements (excluding the purchase of energy from the electric grid that was produced with renewable energy)—2 points]

[(iii)] Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)—1 point]

[(5)] Street paving, drainage, flood control and handicapped accessibility—130 to 160 points—]

[(A)] Street paving activities—]

[(i)] Installation of road base, asphalt or concrete surface pavement, concrete curb and gutter and storm drainage on existing unpaved streets—155 points]

[(ii)] Installation of road base, asphalt or concrete surface pavement, and drainage structures on existing unpaved streets—153 points]

[(iii)] Construction of new streets that include installation of road base, asphalt or concrete surface pavement, and concrete curb and gutter—155 points]

[(iv)] Installation of road base, asphalt or concrete surface pavement, and roadside ditch improvements on existing unpaved streets—151 points]

[(v)] Construction of new streets that include installation of road base and asphalt or concrete surface pavement—146 points]

[(vi)] Installation of asphalt or concrete surface pavement on existing unpaved streets—144 points]

[(vii)] Reconstruction of existing paved streets—135 points]

[(viii)] Other eligible street paving activities—130 points]

[(B)] Drainage activities—]

[(i)] Installation of designed drainage structures for an area currently using natural terrain for drainage—155 points]

[(ii)] Construction including changes to terrain such as unlined ditches to improve drainage for an area currently using natural terrain for drainage—150 points]

[(iii)] Installation of designed drainage structures to replace existing drainage structures to improve the drainage for an area—145 points]

[(iv)] Reconstruction of unlined ditches to improve drainage for an area—142 points]

[(v)] Clearance of obstructions to unlined ditches or other drainage structures to improve drainage for an area—135 points]

[(vi)] Other eligible drainage activities—130 points]

[(C)] Flood control activities—]

[(i)] Installation of designed flood control structures such as dams or retention ponds—155 points]

[(ii)] Installation of retention walls, creek bed walls, storm sewers, or ditches needed to control flood water—150 points]

[(iii)] Reconstruction of existing flood control structures—145 points]

[(iv)] Clearance of obstructions to flood control structures—135 points]

[(v)] Other eligible flood control activities—130 points]

[(D)] Handicapped accessibility activities—]

[(i)] Addressing all needed improvements to provide complete accessibility to a public building (complete accessibility includes handicapped parking, ramps, handrails, doorway widening, restroom modifications, water fountain modifications, access to upper and lower floors (elevator or lift) and other related improvements)—155 points]

[(ii)] Addressing some of the needed improvements to provide complete accessibility to a public building (complete accessibility includes handicapped parking, ramps, handrails, doorway widening, restroom modifications, water fountain modifications, access to upper and lower floors (elevator or lift) and other related improvements)—145 points]

[(iii)] Other eligible handicapped accessibility activities—130 points]

[(E)] Additional subjective considerations for street paving, drainage, flood control and handicapped accessibility—]

[(i)] How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction—1 to 5 points]

[(ii)] Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)—1 point]

[(6)] Fire protection, health clinics, and facilities providing shelter for persons with special needs (hospitals, nursing homes, convalescent homes)—125 to 145 points—]

[(A)] Fire protection activities—]

[(i)] Purchasing fire fighting vehicles, ambulance or EMS vehicle for fire department use—140 points]

[(ii)] Construction of a new fire station and fire fighting vehicles and equipment—135 points]

[(iii)] Purchasing fire fighting equipment for fire department staff—132 points]

[(iv)] Construction of a new fire station only—130 points]

[(v)] Other eligible fire protection activities—125 points]

[(B)] Health clinic activities-]

[(i)] Construction of a new health clinic building—140 points]

[(ii)] Rehabilitation or expansion of an existing health clinic building—135 points]

[(iii)] Purchase of equipment related to existing health clinic structures such as heating and cooling equipment—130 points]

[(iv)] Other eligible health clinic activities—125 points]

[(C)] Facilities providing shelter for persons with special needs (hospitals, nursing homes, convalescent homes)-]

[(i)] Construction of a new publicly owned and operated facility—140 points]

[(ii)] Rehabilitation or expansion of an existing facility—135 points]

[(iii)] Purchase of equipment related to the existing facility such as heating and cooling equipment—130 points]

[(iv)] Other eligible facility activities—125 points]

[(D)] Additional subjective considerations for fire protection, health clinics, and facilities providing shelter for persons with special needs-]

[(i)] How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction—1 to 5 points]

[(ii)] Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)—1 point]

[(7)] Community centers, senior citizen centers, and social services centers—115 to 135 points-]

[(A)] Community center activities-]

[(i)] Construction of a new community center building that will provide services and recreation activities—130 points]

[(ii)] Construction of a new community center building that will provide only recreation activities—125 points]

[(iii)] Rehabilitation or expansion of an existing community center to increase services or the number of people served—123 points]

[(iv)] Rehabilitation or expansion of an existing community center without any additional services or increase to the number of people served—121 points]

[(v)] Other eligible community center activities—115 points]

[(B)] Senior citizen center activities-]

[(i)] Construction of a new senior center building that will provide services and recreation activities—130 points]

[(ii)] Construction of a new senior center building that will provide only recreation activities—125 points]

[(iii)] Rehabilitation or expansion of an existing senior center building to increase services or the number of people served—123 points]

[(iv)] Rehabilitation or expansion of an existing senior center building without any additional services or increase to the number of people served—121 points]

[(v)] Other eligible senior citizens center activities—115 points]

[(C)] Social service center activities-]

[(i)] Construction of a new building to provide first-time services to an area—130 points]

[(ii)] Rehabilitation or expansion of an existing center building to increase services or the number of people served—125 points]

[(iii)] Rehabilitation or expansion of an center building without any additional services or increase to the number of people served—121 points]

[(iv)] Other eligible social services center activities—115 points]

[(D)] Additional subjective considerations for community centers, senior citizen centers, and social services centers-]

[(i)] How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction—1 to 5 points]

[(ii)] Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)—1 point]

[(8)] Demolition/clearance and code enforcement activities—115 to 135 points-]

[(A)] Demolition/clearance activities-]

[(i)] Addressing condemnation activities, eliminating vacant hazardous structures, or eliminating vacant structures used for illegal activities—130 points]

[(ii)] Addressing neighborhood beautification activities—125 points]

[(iii)] Addressing clearance of vacant lots only—117 points]

[(iv)] Other eligible demolition/clearance activities—115 points]

[(B)] Code enforcement activities-]

[(i)] Addressing condemnation activities, eliminating vacant hazardous structures, or eliminating vacant structures used for illegal activities—130 points]

[(ii)] Addressing neighborhood beautification activities—125 points]

[(iii)] Addressing clearance of vacant lots only—117 points]

{(iv)} Other eligible code enforcement activities—115 points]

{(C)} Additional subjective considerations for demolition/clearance and code enforcement activities.]

{(i)} How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction—1 to 5 points]

{(ii)} Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)—1 point]

{(9)} Gas facilities, electrical facilities and solid waste disposal activities—110 to 130 points.]

{(A)} Gas facility activities.]

{(i)} Provide first-time gas service to area through a publicly owned and operated utility—125 points]

{(ii)} Provide first-time gas service to area through a privately-owned for-profit utility—120 points]

{(iii)} Replace existing gas lines for a publicly owned and operated utility to improve service—115 points]

{(iv)} Replace existing gas lines for a privately-owned for-profit utility to improve service—112 points]

{(v)} Other eligible gas facility activities—110 points]

{(B)} Electrical facility activities.]

{(i)} Provide first-time electric service to area through a publicly owned and operated utility—125 points]

{(ii)} Provide first-time electric service to area through a privately-owned for-profit utility—120 points]

{(iii)} Replace existing electric lines for a publicly owned and operated utility to improve service—115 points]

{(iv)} Replace existing electric lines for a privately-owned for-profit utility to improve service—112 points]

{(v)} Other eligible electric facility activities—110 points]

{(C)} Solid waste disposal activities.]

{(i)} Activities that include landfill equipment, or transfer station equipment, or site improvements and first-time recycling service—125 points]

{(ii)} Construction of a transfer station with necessary eligible equipment and recycling service—122 points]

{(iii)} Activities that include landfill equipment, or transfer station equipment, or site improvements—119 points]

{(iv)} Acquisition of property for a landfill site or transfer station site and minimal site improvements—115 points]

{(v)} Other eligible solid waste disposal activities—110 points]

{(D)} Additional subjective considerations for gas facilities, electrical facilities and solid waste disposal activities.]

{(i)} How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction—1 to 5 points]

{(ii)} Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)—1 point]

{(10)} Access to basic telecommunication activities—105 to 125 points.]

{(A)} Provide first-time access to telecommunications and the internet to an area—120 points]

{(B)} Additional subjective considerations for access to basic telecommunication activities.]

{(i)} How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction—1 to 5 points]

{(ii)} Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)—1 point]

{(11)} Jails and detention facility activities—105 to 125 points.]

{(A)} Jail facility activities.]

{(i)} Construction of a new jail—120 points]

{(ii)} Construction of a new police substation in a documented high-crime area—120 points]

{(iii)} Rehabilitation of an existing jail or police substation—110 points]

{(iv)} Other eligible jail facility activities—105 points]

{(B)} Detention facility activities.]

{(i)} Construction of a new juvenile detention facility—120 points]

{(ii)} Construction of a new adult detention facility—118 points]

{(iii)} Rehabilitation of an existing detention facility—110 points]

{(iv)} Other eligible detention facility activities—105 points]

{(C)} Additional subjective considerations for jails and detention facility activities.]

{(i)} How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction—1 to 5 points]

{(ii)} Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)—1 point]

{(12)} All other eligible activities—85 to 115 points.]

{(A)} Park activities.]

{(i)} Construction of a first-time park area or expansion of an existing park to include a recreational activity that is not available at any existing park serving the area—110 points]

{(ii)} Improvement to an existing park—100 points]

{(B) Public service activities: Providing public service that has not been provided by the unit of general local government in the preceding 12 months—110 points}

{(C) All other eligible activities: All other eligible activities—85 points}

{(D) Additional subjective considerations for jails and detention facility activities.}

{(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction—1 to 5 points}

{(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)—1 point}

{(13) If the documentation type or terminology differs from what is stated in a particular category but the intent or purpose is the same, the Office may in its discretion use the score for that category rather than assign it to a lower purpose as the document stated in a particular category; the Office may decide to use that category rather than a lower scoring category. The applicant should provide evidence to support such a determination.}

{(14) The total points awarded may not exceed the maximum point range for any activity category.}

§255.4. Planning/Capacity Building Fund.

(a) (No change.)

(b) Funding cycle. This fund is allocated to eligible units of general local government on a biennial basis for the 2009 and 2010 [2007 and 2008] program years pursuant to a statewide competition held during the 2009 [2007] program year. Applications for funding from the 2009 and 2010 [2007 and 2008] program year allocations must be received by the TxCDBG by the dates and times specified in the most recent application guide for this fund.

(c) Selection procedures. Scoring and the recommended ranking of projects are done by Office staff with input from the regional review committees. The application and selection procedures consist of the following steps.

(1) - (6) (No change.)

(7) The Office staff submits the 2009 [2007] program year and 2010 [2008] program year funding recommendations to the state review committee. In consultation with the executive director and Tx-CDBG office staff, the state review committee reviews and approves grant applications and associated funding awards of eligible counties and municipalities.

(8) Upon the announcement of the 2009 and 2010 [2007] program year contract awards, the Office staff works with recipients to execute the contract agreements. The award is based on the information provided in the application and on the amount of funding proposed for each contract activity based on the matrix included in the most recent application guide for this fund.

{(9) Upon the announcement of the 2006 program year contract awards, the Office staff works with recipients to execute the contract agreements. The award is based on the information provided in the application and on the amount of funding proposed for each contract activity based on the matrix included in the most recent application guide for this fund.}

(d) Selection criteria. The following is an outline of the selection criteria used by the Office for selection of the projects under the

planning/capacity building fund. Four hundred thirty points are available.

(1) (No change.)

(2) Benefit to Low/Moderate Income Persons (total—0 Points). Applicants are required to meet the 51% low/moderate income benefit as a threshold requirement, but no score is awarded on this factor.

(3) Project Design—375 Points (Maximum).

(A) Program Priority (up to 50 points)—Applicant chooses its own priorities here with 10 points awarded per priority as provided in clauses (i) - (iii) of this subparagraph.

(i) Base studies (base mapping, housing, land use, population components) are recommended as one selected priority for applicants lacking updated studies unless they have been previously funded by TxCDBG or have been completed using other resources.

(ii) An applicant requesting TxCDBG funds for fewer than five priorities may receive point credit under this factor for planning studies completed within the last 10 years that do not need to be updated. An applicant requesting TxCDBG funds for a planning study priority that was completed within the past 10 years using TxCDBG funds would not receive scoring credit under this factor.

(iii) Applicants should not request funds to complete a water or sewer study if funds have been awarded within the last two years for these activities or funds are being requested under other Tx-CDBG fund categories.

(B) Base Match (total—0 Points). The population will be based on available information in the latest national decennial census.

(i) Five percent match required from applicants with population equal to or less than 1,500.

(ii) Ten percent match required from applicants with population over 1,500 but equal to or less than 3,000.

(iii) Fifteen percent match required from applicants with population over 3,000 but equal to or less than 5,000.

(iv) Twenty percent match required from applicants with population over 5,000.

(4) Areawide Proposals (total—50 points). Applicants with jurisdiction-wide proposals because the entire jurisdiction is at least 51 percent low/moderate-income qualify for these points. County applicants with identifiable, unincorporated communities may also qualify for these points provided that incorporation activities are underway. Proof of efforts to incorporate is required. County applicants with identifiable water supply corporations may apply to study water needs only and receive these points.

(5) Planning strategy and products (total 275 points).

(A) Planning Strategy and Products (50, 30 or 20 points possible, if previous plan implementation shown.):

(i) An applicant which has not previously received a planning/capacity building contract or an applicant which has received a planning/capacity building fund contract prior to the 2000 program year and has not received any subsequent planning/capacity building fund contracts—50 points.

(ii) An applicant which has received previous planning/capacity building funding and demonstrates that at least three previous planning recommendations have been implemented, i.e., funds

from any source have been spent to implement recommendations included in the plans—30 points.

(iii) An applicant which has participated in the program established under this section and demonstrates implementation of two of the planning recommendations, regardless of the source of funding, or an applicant which has received previous planning/capacity building funding but demonstrates that conditions have changed to warrant new planning for the same activities—20 points.

(iv) Previous recipients of Planning and Capacity Building Funds since program year 2000 scored under clauses (ii) and (iii) of this subparagraph that have not implemented the previously funded activities, and there are no special or extenuating circumstances prohibiting implementation, will not receive points under the "previous planning" category. Implementation must be completely documented in the original submission of the application and its questionnaire. Further documentation will not be requested.

(B) Proposed Planning Effort (up to 225 points) based on an evaluation of the following:

(i) Community Needs Assessment (Must have both items to get 10 points). Needs identified by priority (7 points); Documentation included of citizen input by three or more non-elected citizens involvement (3 points).

(ii) Good hearings' notices, timeliness (up to 25 points). Hearing notices and publication happened as described in the application guide and all documentation submitted in original application.

(iii) Anticipated Actions (Must have both items):

(I) Applicant has included its anticipated actions to each listed need (10 points);

(II) If only one hearing to determine needs and no other means of needs assessment, is the #1 need in the locality's CD application's Needs Assessment the same as the #1 need in the locality's PCB application's Needs Assessment? If no, subtract 20 points.

(iv) Community is organized as evidenced by a citizens advisory committee, or documents Texas Historical Commission Main Street designation, or previous successful PCB contract close-out since 2000 (with no more than a two-year contract period for PCB performance since PY 2000), thereby indicating for purposes here that it would ensure a planning process or plan implementation (up to 15 points).

(v) Applicant's resolution specifically names activities on Table 2 for which it is applying (up to 5 points).

(vi) According to the application, applicant is applying for planning only; no construction activities proposed for 2009-2010 TxCDBG (up to 23 points).

(vii) Table 1, Description of Planning Activity (up to 5 points, One (1) point apiece)

(I) Originally submitted TABLE 1 requests eligible activities;

(II) Originally submitted TABLE 1 proposes an inventory, analysis and plan;

(III) Originally submitted TABLE 1 addresses identified needs;

(IV) Originally submitted TABLE 1 activities match Table 2 planning elements;

(V) Originally submitted TABLE 1 describes or indicates an implementable strategy.

(viii) Table 2, Benefit to Low/Mod Income Persons (Must have all items, if applicable, to get 5 points):

(I) Amount requested in original submission is less than or equal to matrix prescribed amount;

(II) If special activity funding is requested, the amount was negotiated, as per the matrix;

(III) All proposed activities in original application relate to described needs and resolution.

(ix) Community Base Questionnaire: Original was complete; entire questionnaire included with the original application (up to 3 points). Subtract one (1) point for each blank or non-response where an answer space is provided and an answer is needed to provide a score anywhere on this form up to a maximum of -3.

(x) Staff Capacity: Applicant has demonstrated staff capacity, by having either a Full-time city manager or city administrator, or Full-time planner or documented planner on retainer (up to 2 points).

(xi) Organization for planning: One of the following exists within the applicant's jurisdiction: Planning & Zoning Commission; Planning Commission; Zoning Commission; Zoning Board of Adjustment; Citizens Advisory Committee; or Other local group involved (up to 1 point).

(xii) Applicant has one organization for planning that met seven (7) or more times per calendar year. May require documentation (up to 5 points).

(xiii) Applicant has at least three of the following codes or ordinances passed (or updated) since January 1, 1990, according to the original application: Zoning, Building, Subdivision, Gas Natural, Electrical, Fire, or Plumbing (up to 3 points).

(xiv) Applicant has zoning and no land use and future land use maps (subtract 3).

(xv) Zoning was passed before land use plan was passed. In this instance, the zoning/zoning district map will not be considered as the land use plan (subtract 3).

(xvi) Applicant has at least two of the following codes or ordinances passed or updated since January 1, 1990, according to the original application: Mobile Home, Minimum Standards Housing, Flood Plain, Dangerous Structures, or Fair Housing (up to 3 points).

(xvii) Applicant has at least three (3) the following elements not funded through TxCDBG less than 10 years old (completed since September 30, 1998), according to the application; or, will have in place the following element(s) prior to awards: Land Use, Water System, Housing, Wastewater, Street Plan, Drainage, ED Plan, Solid Waste, CBD Plan, or CIP (2 points maximum; but no points, if reapplying for TxCDBG funding for same elements that were completed within the last ten years using TxCDBG funds).

(xviii) Applicant has both: property tax and sales tax (up to 10 points).

(xix) According to the application, applicant has been successful in collecting an average of 95% or more of its property taxes for the two years of 2006 and 2007 (up to 3 points).

(xx) Applicant reports it has a code enforcement officer (1 point).

(xxi) According to applicant, population change from 2000 to present is (up to 10 points):

(I) Greater than 5% but less than or equal to 10% (2 points);

(II) Greater than 10% but less than or equal to 15% (4 points);

(III) Greater than 15% but less than or equal to 20% (6 points);

(IV) Greater than 20% but less than or equal to 25% (8 points);

(V) Greater than 25% (10 points).

(xxii) Applicant reports it has passed a one-half cent sales tax to fund economic development activities (2 points).

(xxiii) Applicant has performed any two activities to attract or retain business and industry (2 points)

(xxiv) Applicant has applied for federal or state funds (other than TxCDBG) in the last three years (since January 1, 2005) or is currently applying (2 points).

(xxv) Applicant is specifically requesting funding under this application for a Capital Improvement Program or has indicated in the application that a capital improvement programming process is routinely accomplished (1 point).

(xxvi) Applicant reports it has bonded debt as of June 30, 2008 indicating local commitment and an attempt to control problems and implement improvements (4 points).

(xxvii) Applicant reports its per capita bonded debt as less than \$500 as of June 30, 2008 generally indicating some additional debt capacity; and, perhaps, indicating the proposed activities will result in the development of a viable and implementable strategy and be an efficient use of grant funds (10 points).

(xxviii) Applicant reports its total debt as less than 10 percent of total market value as of June 30, 2008 (7 points).

(xxix) Applicant reports its annual debt service as less than 20 percent of annual revenues as of June 30, 2008 (6 points).

(xxx) Applicant is in a COG region which had no recipients of TxCDBG Planning and Capacity Building Funds in the previous application cycle--BVCOG, CAPCOG, CTCOG, CVCOG, DETCOG, LRGVDC, PRPC, SETRPC (5 points).

(xxxi) Applicant is requesting fewer than five (5) priority activities and is requesting no more than the dollar amount prescribed in the matrix and no Special Activities requested (6 points).

(xxvii) Applicant is requesting planning funds strictly according to the matrix after competing unsuccessfully last competition or applicant has a population shown on Table 2 of at least 200 but less than or equal to 600 (5 points).

(xxviii) Commitment, as exhibited by match, based on 2000 Census (up to 5 points). Applicant is contributing the following percentage more than required over the base match amount for its population level:

(I) less than 5% (0 points);

(II) 5% but less than 10% more than required (2 points);

(III) 10% but less than 15% more than required (3 points);

(IV) 15% but less than 20 more than required (4 points); or

(V) At least 20% more than required (5 points);

(xxxiv) Application was received in a complete state; that is, a review letter did not have to request any missing application components, information requested in the application's forms or documentation that must be attached as instructed in the application. Mathematical tabulations and beneficiary data derived from census data must be correct upon receipt. Beneficiary information derived from a survey is an exception. Survey data corrected or changed by ORCA when the applicant is qualifying using only survey data or in combination with census data may be changed in the application without penalty. Applicant will not qualify to compete, if the effect of any change is to drop the low/mod rate below 51 percent (15 points).

(xxv) Applicant has listed at least three indications of the locality's likelihood to stay directly involved in the planning process and to implement the proposed planning (1 point).

(xxvii) Special Impact. Whether the list referenced above indicates in the top three reasons that some significant event will occur or has occurred in the region that may impact ability to provide services, such as, a factory locating in the area that will increase jobs, the announced closure of an employer that will reduce jobs; declared natural disaster, or, for example, the announcement of construction of a major interstate highway in the area, etc. (1 point).

(xxviii) Applicant has no overdue Audit Certifications Forms or Single Audits or audit resolutions as of September 30, 2008 according to Compliance Unit (2 points).

(xxviii) Applicant has never received a TxCDBG grant and the application indicates the applicant has currently a property tax and a sales tax (10 points).

[(2) Project scope (total--100 points)-]

[(A) Program priority (up to 50 points): An applicant chooses its own priorities under this scoring factor. All activities are weighted at ten points apiece. An applicant receives 50 points for its first five priorities. Base studies (base mapping, housing, land use, population components) are recommended for those who lack these updated studies. An applicant is not limited to requesting only its first five priorities. It may also request funds for activities viewed as necessary, but no additional points would be available for these activities. Applicants with fewer than five priorities or wishing to accomplish fewer than five activities receive point consideration for efficient use of grant funds under "Planning Strategy and Products" described in the most recent application guide for this fund-]

[(B) Areawide proposals (up to 50 points): An applicant must propose to conduct all activities described in its application throughout the entire jurisdiction of the applicant to receive the maximum 50 points. An applicant proposing target area planning receives zero points. County applicants with identifiable, unincorporated communities qualify for these points provided that incorporation or other organization of the unincorporated communities is being considered as an option-]

[(3) Planning strategy and products (total 275 points)-]

[(A) Previous planning (up to 50 points)-]

[(i) An applicant which has not previously received a planning/capacity building contract or an applicant which has received a planning/capacity building fund contract prior to the 1995 program year and has not received any subsequent planning/capacity building fund contracts--up to 50 points-]

[(ii)] An applicant which has received previous planning/capacity building funding and demonstrates that at least three previous planning recommendations have been implemented; i.e., funds from any source have been spent to implement recommendations included in the plans—up to 40 points;]

[(iii)] An applicant which has participated in the program established under this section and demonstrates implementation of some of the planning recommendations; regardless of the source of funding; or an applicant which has received previous planning/capacity building funding but demonstrates that conditions have changed to warrant new planning for the same activities—up to 20 points;]

[(iv)] Previous recipients of Planning and Capacity Building Funds since program year 1995 scored under clauses (ii) and (iii) of this subparagraph that have not implemented the previously funded activities; and there are no special or extenuating circumstances prohibiting implementation; will not receive points under the Previous planning category. Implementation must be completely documented in the original submission of the application and its questionnaire. Further documentation will not be requested prior to scoring consideration;]

[(B)] Proposed planning effort (225 points). The factors considered by staff of the Office in determining this score are as follows:]

[(i)] Community Needs Assessment (up to 10 points) Application must have the following for points:]

[(i)] Needs clearly identified by priority; and]

[(ii)] Evidence of strong citizen input or known citizen involvement;]

[(iii)] Evidence of effort to notify special groups included with the originally submitted application (up to 5 points);]

[(iv)] Good hearings' notices; timeliness and/or participation: Hearing notices and publication happened as described in the application guide (up to 10 points);]

[(v)] How clearly the proposed planning effort results in a strategy to resolve the identified needs (up to 15 points);]

[(vi)] Whether the proposed activities will result in development of a viable strategy that can be implemented and would be an efficient use of grant funds (up to 15 points);]

[(vii)] Anticipated actions are clear, concise and reasonable (i.e., applicant has responded properly) and anticipated actions match needs (up to 10 points) (Must have both items to receive these points);]

[(viii)] Community is organized and would ensure a planning process or plan implementation (as evidenced by advisory committee, main street designation, previous good performance, etc.) (up to 5 points);]

[(ix)] Applicant's resolution specifically names activities for which it is applying (up to 5 points);]

[(x)] Applicant is applying for planning only; no construction activities proposed for the 2007 - 2008 TxCDBG (up to 3 points);]

[(x)] Table 1; Description of Planning Activity; in application (up to 15 points) (Must have all items to receive points);]

[(i)] Originally submitted application describes eligible activities;]

[(ii)] Originally submitted application describes understanding of plan process;]

[(iii)] Originally submitted application addresses identified needs;]

[(iv)] Originally submitted application appears to result in solution to problems; and]

[(v)] Originally submitted application describes or indicates an implementable] strategy;

[(xi)] Table 1; Description of Planning Activity; in application: (total 10 points);]

[(i)] Original application requests recommended base planning activities (up to 5 points); and]

[(ii)] Original application documents independent effort in base planning (up to 5 points);]

[(xii)] Table 2; Benefit to low/moderate income persons (up to 10 points) (Must have all items; if applicable; for points);]

[(i)] Amount requested in original submission is less than or equal to matrix prescribed amount;]

[(ii)] If special activity funding is requested, the amount appears to be reasonable; and]

[(iii)] All proposed activities in original application relate to described needs and resolution;]

[(xiii)] Community based questionnaire (up to 5 points) (Must have both for points);]

[(i)] Original was complete; no pages missing; no more than one to three blanks; no disparities; and]

[(ii)] Considering the applicant's size, the form indicates an attempt to control problems;]

[(xiv)] Staff Capacity—Applicant has demonstrated staff capacity (up to 3 points);]

[(xv)] Organization for Planning (to 5 points total)—One of the following exist within the applicant's jurisdiction: Planning and Zoning Commission, Planning Commission, Zoning Commission, Zoning Board of Adjustment, Citizens Advisory Committee, or other local group involved;]

[(xvi)] One organization for planning meets six or more times per year (5 points);]

[(xvii)] Applicant has at least three of the following codes or ordinances passed since 1983, according to the original application (3 points): Zoning; Building; Subdivision; Gas-Natural; Electrical; Fire; Plumbing;]

[(xviii)] Adjustments (Subtract up to 6 points): Applicant has zoning and no land use and future land use maps and requests no base studies (subtract 3 points); and zoning passed before land use plan accomplished and no indication to do land use and/or no zoning requested (subtract 3 points);]

[(xix)] Applicant has at least two of the following codes or ordinances passed since 1980, according to the original application Mobile Home; Minimum Standards-Housing; Flood Plain; Dangerous Structures; and Fair Housing (up to 5 points);]

[(xx)] Applicant has at least 3 of the following element(s) that are less than 10 years old according to the application or will have in place the following element(s) prior to awards (up to 5 points maximum; but no points if reapplying for TxCDBG funding for same activities accomplished since 1995): Land Use; Water System; Housing; Wastewater; Street Plan; Drainage; Economic Development

Plan; Solid Waste; Central Business District Plan; Capital Improvement Program; or Recreation/Parks;]

{(xxi)} Applicant has both a property and sales tax (up to 5 points);]

{(xxii)} Applicant has been successful in collecting an average of 95% or more of its property taxes for the two years—2002 and 2003 (per application) (up to 3 points);]

{(xxiii)} Applicant reports it has an active code enforcement program (up to 2 points);]

{(xxiv)} The population change (up to a total of 10 points): The population change either positive or negative from 1990 to present is between 5% and 10% (up to 2 points); greater than 10% but less or equal to 15% (up to 4 points); greater than 15% but less or equal to 20% (up to 6 points); greater than 20% but less or equal to 25% (up to 8 points); or greater than 25% (up to 10 points);]

{(xxv)} Applicant reports it has passed a one-half cent sales tax to fund economic development activities (3 points);]

{(xxvi)} Applicant has performed activities to attract or retain business and industry (other than passing the 1/2 cent sales tax) (up to 3 points);]

{(xxvii)} Applicant has applied for federal or state funds (other than TxCDBG) in the last three years or is currently applying (up to 3 points);]

{(xxviii)} Applicant is specifically requesting funding for a Capital Improvement Program in proper implementation sequence or has indicated in the application that a capital improvement programming process is routinely accomplished (up to 3 points);]

{(xxix)} Applicant's responses to questions on the Community Base Questionnaire and/or other portions of the application appear to indicate that the applicant will produce a valid Capital Improvement Program that would draw on local resources and grant/loan programs other than TxCDBG (3 points);]

{(xxx)} Applicant is in a Council of Government region which had no recipients of any kind of TxCDBG planning funds during the previous biennial program years (up to 8 points);]

{(xxxi)} Applicant is requesting fewer than five priority activities and is requesting no more than the dollar amount prescribed in the matrix and no Special Activities requested or applicant is requesting only Special Activities and it is apparent that they are urgently needed from the application (up to 10 points);]

{(xxxii)} Applicant is again requesting planning funds according to the matrix after competing unsuccessfully last competition; according to the Summary Form; or Applicant has a population shown on Table 2 of the application of at least 200 but less than or equal to 500 (up to 5 points);]

{(xxxiii)} Commitment, as exhibited by match, based on 2000 Census (up to 5 points): Applicant is contributing the following percentage more than required over the base match amount for its population level:]

{(I)} less than 5% (0 points);]

{(II)} 5% but less than 10% more than required (2 points);]

{(III)} 10% but less than 15% more than required (3 points);]

{(IV)} 15% but less than 20 more than required (4 points); or]

{(V)} At least 20% more than required (5 points);]

{(xxiv)} Applicant includes at least three sound indications of the locality's likelihood to stay directly involved in the planning process and to implement the proposed planning (up to 3 points);]

{(xxv)} Special Impact: Whether some significant event will occur in the region that may impact ability to provide services, such as a factory locating in the area that will increase jobs by 10 percent; the announced closure of an employer that will reduce jobs by 10 percent; declared natural disaster; or announcement of construction of a major interstate highway in the area (up to 5 points);]

{(xxvi)} Applicant's past performance: Past performance on previous TxCDBG contracts (up to 5 points); and]

{(xxvii)} Applicant has never received a TxCDBG grant and the application would lead one to believe that the project will be completed successfully and the plans implemented (up to 5 points);]

§255.5. Disaster Relief Fund.

(a) General provisions. Assistance under this fund is available to units of general local government for eligible activities under the Housing and Community Development Act of 1974, Title I, as amended, for the alleviation of a disaster situation. To receive assistance under this program category, the situation to be addressed with TxCDBG funds must be both unanticipated and beyond the control of the local government. For example, the collapse of a municipal water distribution system due to lack of regular maintenance does not qualify. If the same situation was caused by a tornado or flood, the community could apply for disaster relief funds. An applicant may not apply for funding to construct public facilities that did not exist prior to the occurrence of the disaster. Starting with the 2004 TxCDBG program year, TxCDBG disaster relief funds will not be provided under the Federal Emergency Management Agency's Hazard Mitigation Grant Program unless the Office receives satisfactory evidence that any property to be purchased was not constructed or purchased by the current owner after the property site location was officially mapped and included in a designated flood plain area. Additionally, in disaster relief situations, the TxCDBG dollars are to be viewed as gap financing or funds of last resort. In other words, the community may only apply to the Office for funding of those activities for which local funds are not available, i.e., the entity has less than six months of unencumbered general operations funds available in its balance as evidenced by the last available audit as required by state statute, or assistance from other sources is not available. TxCDBG will consider whether funds under an existing TxCDBG contract are available to be reallocated to address the situation. TxCDBG may prioritize throughout the program year the use of Disaster Relief assistance funds based on the type of assistance or activity under considerations and may allocate funding throughout the program year based on assistance categories. Assistance under the disaster relief fund is provided only if one of the following has occurred:

(1) The President has issued a federal disaster declaration [The governor has requested a presidential declaration of a major disaster]; or

(2) (No change.)

(b) - (c) (No change.)

{(d) Disaster recovery initiative funds: Disaster recovery initiative funds are available to eligible counties, cities, and Indian tribes to address damages from severe rain storms and flooding. Any damages sustained in the eligible county areas that were sustained from storm or flood conditions that occurred before or after the dates designated in disaster recovery initiative notices for funding are not eligible for assistance. Disaster recovery initiative funds may supplement, but not replace, resources received from other Federal or State agencies

to address the damages from the storm and flood conditions. These funds cannot be used for activities that were reimbursable by or for which funds were made available from the Federal Emergency Management Agency, the Small Business Administration, the National Resource Conservation Service, or the U.S. Army Corps of Engineers.]

{(e) Eligible applicants for disaster recovery initiative funds. Eligible applicants for these funds are nonentitlement and entitlement counties, incorporated cities, or eligible Indian tribes located in one of the counties named in disaster recovery initiative notices for funding that are preceded by Presidential Disaster Declarations for counties in Texas that sustained damages from severe storms and flooding.}]

{(f) Eligible disaster recovery initiative activities. Since the eligible activities may vary in each disaster recovery initiative notice for funding, eligible applicants are informed of the eligible activities in each application guide for disaster recovery initiative assistance.}]

{(g) Disaster recovery initiative funding cycle. An application for these funds can be submitted on an as-needed basis. An eligible applicant can only submit one application for these funds. Based on the disaster recovery initiative selection criteria, applications selected to receive funding may not necessarily be selected on a first-come, first-served basis.}]

{(h) Disaster recovery initiative selection criteria. The following describes the evaluation criteria used by the Office to select disaster recovery initiative grantees.}]

{(1) Priority for the use of these funds will be given to applications where all or some of the application activities meet the national program objective of principally benefiting low and moderate income persons. To meet this national program objective at least 51% of the beneficiaries for an application activity must be low and moderate income persons.}]

{(2) Priority for these funds will be given to eligible applicants that have not already received a TxCDBG disaster relief grant for activities associated with the occurrence of this disaster.}]

{(3) For any application that includes construction or acquisition activities, the Office will consider the applicant's status as a nonparticipating, noncompliant community under the National Flood Insurance Program when prioritizing the selection of the applicants that will receive disaster recovery initiative funds.}]

§255.8. Regional Review Committees.

(a) Composition. There is a regional review committee in each of the 24 state planning regions. Each committee consists of at least 12 members appointed by the governor. Composition of each regional committee reflects geographic diversity within the region, difference in population among eligible localities, and types of government (general law cities, home rule cities, and counties). The chairperson of the committee is also appointed by the governor. Members of the committee serve two-year staggered terms. An individual may not serve as a member of a regional review committee while serving as a member of the State Community Development Review Committee.

(b) Role. Under the Community Development Fund each Regional Review Committee is responsible for determining local project priorities and objective factors based on public input. The RRC shall establish the numerical value of the points assigned to each scoring factor and determine the total combined points for all RRC scoring factors. [Each regional review committee reviews and scores all applications submitted from within its region under the community development fund.] Each regional review committee may review and comment on other TxCDBG applications. [Each regional review committee sends its scores and comments to the Office. Regional review committees may elect to utilize staff of regional planning commissions

to assist with project review responsibilities except when staff of the regional planning commission intend to prepare TxCDBG applications for the current funding cycle or when staff of the regional planning commission intend to administer TxCDBG projects that could receive TxCDBG funding under the current funding cycle. When staff of the regional planning commissions cannot assist with project review responsibilities, the Office staff may provide the assistance.}]

(c) General requirements. In the performance of its responsibilities, each regional review committee shall comply with all federal and state laws and regulations relating to the administration of community development block grant nonentitlement area funds including, but not limited to, requirements of this subchapter, the scoring procedures specified in the current Regional Review Committee Guidebook, and the procedures established by the regional review committee under the TxCDBG.

(1) RRC Must Notify Applicants of Public Hearing to Adopt Local Project Priorities and Objective Scoring Factors.

(A) The RRC proceedings are subject to the Texas Open Meetings Act. The notice of the public hearing and agenda to determine local project priorities and objective scoring criteria must be posted electronically in the Secretary of State's internet site under the Texas Register/Open Meetings, <http://www.sos.state.tx.us/texreg/>. The notification process requires three days (72-hours) advance notice. The public hearing information must include the date, time and place of the RRC public hearing and the full agenda.

(B) In addition, the RRC must notify each eligible locality in the region in writing of the date, time and place of the RRC public hearing at least five days prior to the public hearing. One of the following four methods must be utilized when sending the notice: certified mail; electronic mail; first class (regular) mail, with a return receipt for local signature enclosed; or deliver in person (e.g., at a Council of Governments (COG) meeting).

(C) A notice of the public hearing must be published in a regional newspaper in the region at least three days in advance of the actual meeting. A published newspaper article is acceptable in lieu of a public notice if it meets the content (date, time, location and purpose) and timing requirements.

(D) The RRC must provide for public comments on the public hearing agenda. RRC discussions, deliberations and votes must be taken in public and must comply with the Texas Open Meetings Act.

(2) Quorum Required for Public Hearing. A public hearing of the RRC requires a quorum of seven members (regardless of status of term or elected office) appointed by the governor. Each Regional Review Committee must establish a policy that prohibits voting by committee members who arrive late or do not attend the entire public hearing held to adopt local project priorities and objective scoring factors and other RRC procedures.

(3) Only Appointed RRC Members May Vote on RRC Actions. An appointed member may designate a local official alternate from his/her city or county to participate in the RRCs deliberations for the purpose of meeting a quorum. This alternate person must be authorized in writing from the official being represented prior to his/her participation at any RRC meeting where voting is to occur. Please note, however, that proxies cannot vote on RRC matters. (This means that proxies may not vote on organizational matters, selection of project priorities, objective scoring factors, and any other related scoring procedures.) Proxies are there to satisfy the quorum requirements.

(4) RRC May Provide Information to ORCA Concerning Threshold Criteria. RRCs are encouraged to provide information that would assist ORCA in determining applicant compliance with eligibil-

ity thresholds and other information that may be considered by ORCA in the state scoring factors.

[(1) Meetings. Each meeting held by a regional review committee shall conform to the following requirements:]

[(A) The regional review committee shall notify each eligible unit of general local government within the regional review committee's state planning region, in writing, of the date, time and location of its organizational meeting at least five days prior to the meeting. The regional review committee shall notify each applicant within its region, in writing, of the date, time and location of its scoring meeting at least five days prior to the meeting. The notices must be in the format specified by the Office in the most recent Regional Review Committee Guidebook. The notices must also be published in a regional newspaper at least three days prior to the meeting. Articles published in such newspapers which satisfy the content and timing requirements of this subparagraph will be accepted by the Office in lieu of publication of notices. The regional review committee must determine at its organizational meeting whether it will have a housing set-aside and include the decision and amount of housing set-aside in the regional review committee scoring guidelines.]

[(B) Each applicant shall be provided with the opportunity to make a presentation to the regional review committee at its scoring meeting.]

[(C) The order of the presentations shall be randomly selected by the regional review committee.]

[(D) All discussions, deliberations and votes shall be made in public except for items which would be specifically exempted under the Texas Open Meetings Act. The scoring of applications must occur at the same meeting of the regional review committee at which the presentations by applicants are made.]

[(E) A quorum of a simple majority of the current members of the regional review committee, rounded to the nearest whole number, shall be present. Any actions taken by a regional review committee in which a quorum was not present shall be voidable; provided however, that if a conflict of interest situation has required a regional review committee member to excuse himself, thus dropping the number of participating members below the simple majority requirement, a quorum shall have been considered present.]

[(2) Conflicts of interest. No member of a regional review committee shall vote on an application if the member is on the governing body of the applicant or in cases where that member has a personal or pecuniary interest as defined under state law. A county judge or county commissioner may not score an application from an incorporated city within the county, unless specifically authorized by the regional review committee. A regional review committee member may not discuss any application, including the scoring of any application that the member is allowed to score, with any person that may benefit from an award of TXCDBG funds to such application. If a regional review committee member discusses an application with any person that may benefit from an award of TXCDBG funds to such application, the regional review committee member shall abstain from the scoring of that application.]

[(3) Voting. Only appointed members of a regional review committee may vote on an action of the regional review committee. A regional review committee member may designate an alternate to participate in the member's absence. Each regional review committee shall retain all ballots or other voting records used by its members. Such records shall be maintained in an accessible location and be made available for inspection by the public for a period of one year. Each member of a regional review committee shall score each application

individually and shall sign each of his or her ballots and other voting records or scoring sheets. The high and low scores are eliminated and the average of the remaining individual scores is the regional review committee's score on each scoring factor. Consensus scoring is not permitted.]

[(4) Scoring procedures. Each regional review committee (RRC) must submit its scoring procedures to the Office for approval before the procedures are disseminated to all eligible applicants in its region. The committee must establish, as part of the organizational meeting, a scoring methodology for each of the selection factors listed under Local Effort and Merits of the Project consistent with HUD regulations, as determined by TXCDBG. The scoring procedure must prescribe the method of documenting the committee member's score. The RRC may:]

[(A) further subdivide the broad selection factors/categories into smaller categories/increments and provide additional detail in the RRC scoring for the Local Effort and Merits of the Project;]

[(B) select certain "Key questions/Considerations/Factors" that can be used to evaluate the broad selection factor/category and develop a specific number of scoring ranges, including a scoring range for Yes/No answers; or]

[(C) a combination of A and B, which includes a subdivision of the categories into smaller increments and key questions/considerations with specific scoring ranges. Factors selected must be unambiguous in the method of scoring them. As part of the process, the committee must retain documentation showing how each committee member awarded points under this factor and provide a copy of this documentation of the TXCDBG.]

(d) RRC Responsible for Adopting Local Project Priorities and Objective Scoring Factors.

(1) Preliminary Meetings to Obtain Public Input and Provide Input to the RRC for Consideration During the Public Hearing to Discuss, Select, and Adopt Scoring Factors. The RRCs may hold preliminary meetings prior to the public hearing to obtain public input regarding priorities and scoring factors. Preliminary meetings held by the RRC are subject to the Texas Open Meetings Act. The RRC must notify each eligible locality in the region of the date, time and place of the preliminary meeting at least five days in advance of the meeting by first class (regular) mail, electronic mail, or telephone call. If a quorum is not established, the RRC preliminary meetings may be still be held, but no formal action may be taken. Sample scoring criteria may be developed with public participation and submitted to ORCA for preliminary review and for full discussion and deliberation by the RRC during the public hearing.

(2) Hold Public Hearing to Discuss, Select, and Adopt Scoring Factors. During the public hearing to discuss priorities and adopt objective scoring criteria, the public must be given an opportunity to comment on the priorities and the scoring criteria being considered by the RRC. The RRC may limit the duration of public comment period and length of time for comments. The final selection of the scoring factors is the responsibility of each RRC. The RRC may not adopt scoring factors that directly negate or offset ORCA scoring factors.

(3) RRC Indicates How Responses Will Be Scored and Identify Data Sources. The RRC must clearly indicate how responses would be scored under each factor and use data sources that are verifiable to the public. After the RRC's adoption of its scoring factors, the score awarded to a particular application under any RRC scoring factor may not be dependent upon an individual RRC member's judgment

or discretion. (This does not preclude collective RRC action that the state TxCDBG has approved under any appeals process.)

(e) RRC Selects Administrative Support Staff. The RRC shall select one of the following entities to develop the RRC Guidebook, calculate the RRC scores, and provide other administrative RRC support: Regional Council of Governments (COG), TxCDBG staff or TxCDBG designee, or a combination of COG and TxCDBG staff or TxCDBG designee. The RRC Guidebook must identify the entity responsible for calculating the scores and must define the role of each entity selected. The RRC support staff, as determined above, is responsible for reviewing and verifying RRC information found in the application for scoring purposes, but may not accept additional information from applicants. The RRC support staff may only use the application information forwarded by ORCA for scoring purposes.

(f) RRC May Establish Maximum Grant Amounts. RRC may establish maximum grant amounts within the following ranges:

(1) Single Jurisdiction Applications: \$250,000 - \$800,000

(2) Multi-Jurisdiction Applications: \$350,000 - \$800,000

(3) Where the RRC takes no action, the grant maximum will be \$800,000 for single jurisdiction applications and \$800,000 for multi-jurisdiction applications.

(g) RRC Housing and Non-Border Colonia Set-Asides Encouraged. Each Regional Review Committee is highly encouraged to allocate a percentage or amount of its Community Development Fund (CD) allocation to housing projects and for RRCs in eligible areas, non-border colonia projects, for that region. Under a set-aside, the highest ranked applications for a housing or non-border colonia activity, regardless of the position in the overall ranking, would be selected to the extent permitted by the housing or non-border colonia set-aside level. If the region allocates a percentage of its funds to housing and/or non-border colonia activities and applications conforming to the maximum and minimum amounts are not received to use the entire set-asides, the remaining funds may be used for other eligible activities. (Under a housing and/or non-border colonia set-aside process, a community would not be able to receive an award for both a housing or non-border colonia activity and an award for another Community Development Fund activity during the biennial process. Housing projects/activities must conform to eligibility requirements in 42 U.S.C Section 5305 and applicable HUD regulations.) The RRC must include any set-aside in its Regional Review Committee Guidebook.

(h) RRC Guidebook Adopted and Approved At Least 90 Days Prior to Application Deadline. The RRC Guidebook should be adopted by the RRC and approved by TxCDBG staff at least 90 days prior to the CD application deadline set by ORCA. The RRC shall disseminate the RRC Guidebook to the applicants upon written approval by ORCA. The RRC will be required to submit the public input documentation along with the RRC Guidebook to ORCA.

(i) RRC Scores Are Due to ORCA Within 30 Days to Completion of the Deficiency Period. RRC scores are due to ORCA within 30 days after ORCA notifies the region in writing that the deficiency period is complete. The RRC may not change the requested amount of TxCDBG funding, change the scope of the project proposed, or negotiate the specifics of any application. Regional scores may be calculated and reported to ORCA on less than full point intervals (i.e., using decimal points) in order to reduce the chance of ties between regional applicants. ORCA will retain these same intervals when calculating the total scores and final rankings. The RRC shall announce the RRC scores to the public after ORCA has reviewed the scores for accuracy and written approval is received.

(j) COGs Preparing Applications/Administering CD Contracts May Not Be Selected As RRC Support Staff. COGs that prepare CD Fund applications and manage contracts will not be allowed to serve as Regional Review Committee (RRC) support staff for that region during the public hearing and scoring of applications. These COGs may not prepare the RRC Guidebook or score the region's applications.

(k) Impacts of Failure to Adopt RRC Objective Scoring Factors. ORCA will award 2008 funds for a region after its RRC has adopted an objective scoring for PY 2009. If the RRC does not adopt an objective scoring methodology and submit it to the state TxCDBG for approval by the established deadline above, the state TxCDBG staff will establish for the region the scoring factors in Appendix A for the 2009 applications as described above and will award PY 2008 funds for a region after the region's applications have been re-scored using the State scoring method in IV (C)(1)(a-e) of the 2007 Action Plan.

(l) Appeals. Appeals will be handled in accordance with the following procedures:

(1) Written Notification to RRC and ORCA. An applicant must notify its Regional Review Committee and ORCA in writing of the alleged specific violation of the RRC procedures within five working days following the date the RRC scores are made available to the applicants (RRC staff support is advised to record this date).

(2) RRC Notification to Applicants of Appeal(s). Within ten working days following the receipt of an appeal, the RRC will notify all applicants in the region that the RRC will reconvene to hear the appeal. The RRC will give notice to applicants that their scores may be affected by the outcome of the appeal.

(3) RRC Reconvenes to Hear the Appeal(s). In an open meeting, the RRC shall consult with the appellant jurisdiction and consider the appeal. With a simple majority quorum present (i.e., seven members), the RRC will vote to either deny the appeal and forward the appeal and the original regional scores to ORCA or to sustain the appeal and proceed with corrective actions. If the RRC sustains the appeal, the RRC makes corrections and forwards the corrected regional scores to ORCA. The RRC administrative staff will send a written description of the results of the appeals meeting to all applicants in the region and to ORCA. Please note that applicants negatively affected by an original appeal have the same procedural rights to counter-appeal.

(4) Applicants May Appeal a Decision of the RRC. Within five working days following the decision of the RRC, an applicant may submit an appeal of the RRC decision to ORCA. The appeal must be submitted to ORCA in writing stating the alleged specific violation of the RRC procedure.

(5) ORCA Makes Final Scoring and Ranking Determinations. If the appeal is unresolved by the RRC, denied at the regional level, or if an applicant appeals a decision of the RRC, the ORCA executive director will make a final determination as follows: sustain the appeal and make funding recommendations based on corrected regional scores; or reject the appeal and make funding recommendations considering the original RRC scores. ORCA will notify the region of the decision and post the final rankings for the region.

(6) ORCA Forwards Funding Recommendations to the SRC. Following resolution of regional appeals, ORCA staff will make funding recommendations to the State Review Committee for the 2009 and 2010 program years. The SRC consists of 12 elected officials, including a chairman appointed by the Governor. In consultation with the executive director and TxCDBG office staff, the State Review Committee is responsible for reviewing and approving grant

applications and associated funding awards of eligible counties and municipalities.

(7) Applicants May Appeal A Decision of the SRC and File a Complaint with the ORCA Board. An applicant applying under the CD Fund may appeal a decision of the SRC by filing a complaint with the ORCA Board. The ORCA Board shall hold a hearing on a complaint filed with the Board and render a decision. After the ORCA Board renders a final decision, ORCA will notify the region of the determination and post the final rankings for the region.

{(d) Appeals. An applicant may appeal the actions of the regional review committee established in its state planning region by following the procedures set forth in this subsection. The Office will withhold the running of computer scores on community development fund applications for five working days after the regional review committee's scoring meeting or until all regional appeals, if any, have been resolved, whichever is longer. A regional review committee must provide written notification of each appeal to all applicants in the region. An applicant that is adversely affected by the action of its regional review committee on an appeal, may appeal that action in accordance with the procedures specified in this subsection.}

{(1) An applicant shall notify its regional review committee, in writing, of an alleged violation of regional review committee procedures committed by the regional review committee within five working days after the date of the regional review committee meeting which is the subject of the appeal. The applicant shall also send a copy of the appeal to the Office. All appeals must be based on a specifically identified violation of regional review committee procedures.}

{(2) Within 10 working days after the receipt of an appeal, the regional review committee shall notify all the applicants within its region that the regional review committee will reconvene to hear the appeal. If a quorum of the regional review committee agrees that the alleged procedural violation occurred, the regional review committee shall sustain the appeal, make appropriate adjustments to regional scores, and notify the Office. If a quorum of the regional review committee votes to deny the appeal, the regional review committee shall provide all applicants in the region and the Office with a written statement of the basis of its denial.}

{(3) If the appeal is resolved, the Office runs the computer scores and provides funding recommendations to the state review committee.}

{(4) If the appeal is not resolved, the Office prepares an appeal file for the state review committee. The file includes:}

- {(A) the appeal;}
- {(B) the response of the regional review committee;}
- {(C) Office staff reports; and}
- {(D) comments of other interested parties.}

{(5) The state review committee shall make one of the following recommendations to the executive director of the Office:}

- {(A) sustain the appeal and suggest corrective actions; or}
- {(B) reject the appeal and sustain the regional scores.}

§255.9. Colonia Fund.

(a) General provisions. This fund covers the payment of assessments, access fees, and capital recovery fees for low and moderate income persons for eligible water and sewer improvements projects, all other program eligible activities, eligible planning activities projects, and the establishment of colonia self-help centers to serve severely dis-

tressed unincorporated areas of counties which meet the definition of a colonia under this fund. A colonia is defined as: any identifiable unincorporated community that is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and was in existence as a colonia prior to the Cranston-Gonzalez National Affordable Housing Act (November 28, 1990). For an eligible county to submit an application on behalf of eligible colonia areas, the colonia areas must be within 150 miles of the Texas-Mexico border region, except that any county that is part of a standard metropolitan statistical area with a population exceeding one million is not eligible under this fund.

(1) - (2) (No change.)

(3) Eligibility for the Office's colonia economically distressed areas program EDAP fund (colonia EDAP fund) is limited to counties, and nonentitlement cities (that meet other eligibility requirements including the geographic requirements of the Colonia Fund), located in those counties, that are eligible under the TxCDBG Colonia Fund and Texas Water Development Board's EDAP. Eligible colonia EDAP fund projects shall be located in unincorporated colonias and in eligible nonentitlement cities that annexed the eligible colonia where improvements are to be made within five years after the effective date of the annexation, or are in the process of annexing the colonia where improvements are to be made. A colonia EDAP fund application cannot be submitted until the construction of the Texas Water Development Board's Economically Distressed Areas Program financed water or sewer system begins.

(4) (No change.)

(b) (No change.)

(c) Types of applications. [Eligible applicants may submit one application for the colonia construction fund and the colonia planning fund. Eligible applicants may submit one application for the colonia EDAP fund, unless the TxCDBG has an excess amount of colonia EDAP funds available in which case an eligible applicant could submit more than one application for the colonia EDAP fund. Eligible planning activities cannot be included in an application for the colonia construction fund. Two separate fund categories are available under the colonia planning fund. The colonia area planning fund is available for eligible planning activities that are targeted to selected colonia areas. The colonia comprehensive planning fund is available for countywide comprehensive planning activities that include an assessment and profiles of a county's colonia areas. Separate competitions are held for the colonia area planning fund and colonia comprehensive planning fund allocations. A county that has previously received a colonia comprehensive planning fund grant award from the Office may not submit another application for colonia comprehensive planning fund assistance. For a county to be eligible to submit an application for the colonia area planning fund, the county must have previously completed a colonia comprehensive plan that prioritizes problems and colonias for future action. The colonia or colonias included in the colonia area planning fund application must be colonias that were included in the colonia comprehensive plan.]

(1) Colonia Planning and Construction Fund.

{(A) Colonia Construction Component. The allocation is available on a biennial basis for funding from program years 2009 and 2010 through a 2009 annual competition. Applications received by the 2009 program year application deadline are eligible to receive grant awards from the 2009 and 2010 program year allocations. Funding priority shall be given to TxCDBG applications from localities that have been funded through the Texas Water Development Board Economically Distressed Areas Program (TWDB EDAP) where the Tx-

CDBG project will provide assistance to colonia residents that cannot afford the cost of service lines, service connections, and plumbing improvements associated with access to the TWDB EDAP-funded water or sewer system. An eligible county applicant may submit one (1) application for the following eligible construction activities:

(i) Assessments for Public Improvements—The payment of assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low- and moderate-income to recover the capital cost for a public improvement.

(ii) Other Improvements—Other activities eligible under 42 U.S.C. Section 5305 designed to meet the needs of colonia residents.

(B) Colonia Planning Component. A portion of the funds will be allocated to two separate biennial competitions for applications that include planning activities targeted to selected colonia areas (Colonia Area Planning activities), and for applications that include countywide comprehensive planning activities (Colonia Comprehensive Planning activities). Applications received by the 2009 program year application deadline are eligible to receive a grant award from the 2009 and 2010 program year allocations. A Colonia Planning activities application must receive a minimum score for the Project Design selection factor of at least 70 percent of the maximum number of points allowable under this factor to be considered for funding.

(i) Colonia Area Planning Activities. In order to qualify for the Colonia Area Planning activities, the county applicant must have a Colonia Comprehensive Plan in place that prioritizes problems and colonias for future action. The targeted colonia must be included in the Colonia Comprehensive Plan. An eligible county may submit an application for eligible planning activities that are targeted to one or more colonia areas. Eligible activities include:

(I) Payment of the cost of planning community development (including water and sewage facilities) and housing activities;

(II) costs for the provision of information and technical assistance to residents of the area in which the activities are located and to appropriate nonprofit organizations and public agencies acting on behalf of the residents; and

(III) costs for preliminary surveys and analyses of market needs, preliminary site engineering and architectural services, site options, applications, mortgage commitments, legal services, and obtaining construction loans.

(ii) Colonia Comprehensive Planning Activities. To be eligible for these funds, a county must be located within 150 miles of the Texas-Mexico border. The applicant's countywide comprehensive plan will provide a general assessment of the colonias in the county, but will include enough detail for accurate profiles of the county's colonia areas. The prepared comprehensive plan must include the following information and general planning elements:

(I) Verification of the number of dwellings, number of lots, number of occupied lots, and the number of persons residing in each county colonia;

(II) Mapping of the locations of each county colonia;

(III) Demographic and economic information on colonia residents;

(IV) The physical environment in each colonia including land use and conditions, soil types, and flood prone areas;

(V) An inventory of the existing infrastructure (water, sewer, streets, drainage) in each colonia and the infrastructure needs in each colonia including projected infrastructure costs;

(VI) The condition of the existing housing stock in each colonia and projected housing costs;

(VII) A ranking system for colonias that will enable counties to prioritize colonia improvements rationally and systematically plan and implement short-range and long-range strategies to address colonia needs;

(VIII) Goals and Objectives;

(IX) Five-year capital improvement program.

(2) Colonia Economically Distressed Areas Program (CEDAP) Legislative Set-aside. The allocation is distributed on an as-needed basis. Eligible applicants may submit an application that will provide assistance to colonia residents that cannot afford the cost of service lines, service connections, and plumbing improvements associated with being connected to a TWDB EDAP-funded water and sewer system improvement project. An application cannot be submitted until the construction of the TWDB EDAP-funded water or sewer system begins. Eligible program costs include water distribution lines and sewer collection lines providing connection to water and sewer lines installed through the Texas Water Development Board's Economically Distressed Areas Program (when approved by the TxCDBG), taps and meters (when approved by the TxCDBG), yard service lines, service connections, plumbing improvements, and connection fees, and other eligible approved costs associated with connecting an income-eligible family's housing unit to the TWDB improvements. An applicant may not have an existing CEDAP contract open in excess of 48 months and still be eligible for a new CEDAP award.

(3) Colonia Self-Help Centers Legislative Set-aside. The colonia self-help centers fund is allocated on an annual basis to counties included in Chapter 2306, Subchapter Z, §2306.582, Texas Government Code, and/or counties designated as economically distressed areas under Chapter 17, Texas Water Code. TDHCA has established self-help centers in Cameron County, El Paso County, Hidalgo County, Starr County, and Webb County. If deemed necessary and appropriate, TDHCA may establish self-help centers in other counties (self-help centers have been established in Maverick County and Val Verde County) as long as the site is located in a county that is designated as an economically distressed area under the Texas Water Development Board Economically Distressed Areas Program, the county is eligible to receive EDAP funds, and the colonias served by the center are located within 150 miles of the Texas-Mexico border.

(d) Funding cycle. The colonia construction fund is allocated to eligible county applicants on a biennial basis for the 2007 and 2008 program years pursuant to a competition held for the 2007 program year applicants. The colonia planning fund is allocated on an annual basis to eligible county applicants through competitions conducted during the program year. Applications for funding must be received by the Office by the dates and times specified in the most recent application guide for each separate colonia fund category. The colonia self-help centers fund is allocated on an annual basis to counties included in Subchapter Z, Chapter 2306, §2306.582, Texas Government Code, and/or counties designated as economically distressed areas under Chapter 17, Texas Water Code. The colonia EDAP fund is allocated on an annual basis and the funds are distributed on an as-needed basis.]

(d) [(e)] Selection procedures.

(1) On or before the application deadline, each eligible county may submit one application for the colonia construction component, colonia area planning activities, and colonia comprehensive planning activities [colonia construction fund; for colonia comprehensive planning, and for colonia area planning]. Eligible applicants for the colonia EDAP fund may submit one application after construction begins on the water or sewer system financed by the Texas Water Development Board's Economically Distressed Areas Program.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within ten calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a colonia fund proposal from a jurisdiction within its state planning region. These comments will become part of the application file, provided such comments are received by the Office prior to scoring of the applications.

(4) The Office then scores the colonia construction component, colonia area planning activities, and colonia comprehensive planning activities [colonia construction fund and colonia planning fund] applications to determine rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant. For colonia EDAP fund applications, the Office evaluates information in each application and other factors before the completion of a final technical review of each application.

(5) Following a final technical review, the Office staff presents the funding recommendations for the 2009 and 2010 [2007 and 2008] colonia [construction] fund and colonia EDAP fund [and the 2007 colonia planning fund] to the executive director of the Office. In consultation with the executive director and TxCDBG staff, the state review committee reviews and approves grant applications and associated funding awards of eligible counties and municipalities.

(6) Upon announcement of the 2009 and 2010 [2007] contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(e) [(A)] Selection criteria (colonia [construction] fund). The following is an outline of the selection criteria used by the Office for scoring colonia [construction] fund applications (colonia construction component, colonia area planning activities, and colonia comprehensive planning activities). [For the 2007 and 2008 program years, four hundred thirty points are available.]

(1) Colonia construction component (430 total points maximum).

(A) [(1)] Community distress (total--35 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the

average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(i) [(A)] Percentage of persons living in poverty--15 points

(ii) [(B)] Per capita income--10 points

(iii) [(C)] Percentage of housing units without complete plumbing--5 points

(iv) [(D)] Unemployment rate--5 points

(B) [(2)] Benefit to low and moderate income persons (total--30 points). A formula is used to determine the percentage of TxCDBG funds benefiting low to moderate income persons. The percentage of low to moderate income persons benefiting from each construction, acquisition, and engineering activity is multiplied by the TxCDBG funds requested for each corresponding construction, acquisition, and engineering activity. Those calculations determine the amount of TxCDBG benefiting low to moderate income person for each of those activities. Then, the funds benefiting low to moderate income persons for each of those activities are added together and divided by the TxCDBG funds requested minus the TxCDBG funds requested for administration to determine the percentage of TxCDBG funds benefiting low to moderate income persons. Points are then awarded in accordance with the following scale:

(i) [(A)] 100% to 90% of funds benefiting low to moderate income persons--30 points

(ii) [(B)] 89.99% to 80% of funds benefiting low to moderate income persons--25 points

(iii) [(C)] 79.99% to 70% of funds benefiting low to moderate income persons--20 points

(iv) [(D)] 69.99% to 60% of funds benefiting low to moderate income persons--15 points

(v) [(E)] Below 60% of funds benefiting low to moderate income persons--5 points

(C) [(3)] Project priorities (total--195 points). When necessary, a weighted average is used to assign scores to applications which include activities in the different project priority scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity is calculated. The percentage of the total TxCDBG construction dollars for each activity is then multiplied by the appropriate project priorities point level. The sum of the calculations determines the composite project priorities score. The different project priority scoring levels are:

(i) [(A)] activities (service lines, service connections, and/or plumbing improvements) providing access to water and/or sewer systems funded through the Texas Water Development Board Economically Distressed Area program--195 points

(ii) [(B)] first time public water service activities (including yard service lines)--145 points

(iii) [(C)] first time public sewer service activities (including yard service lines)--145 points

(iv) [(D)] installation of approved residential on-site wastewater disposal systems for providing first time service--145 points

(v) ~~[(E)]~~ installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues--140 points

(vi) ~~[(F)]~~ housing activities--140 points

(vii) ~~[(G)]~~ first time water and/or sewer service through a privately-owned for profit utility--135 points

(viii) ~~[(H)]~~ expansion or improvement of existing water and/or sewer service--120 points

(ix) ~~[(I)]~~ street paving and drainage activities--75 points

(x) ~~[(J)]~~ all other eligible activities--20 points

(D) ~~[(4)]~~ Matching funds (total--20 points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. Applications that include a housing rehabilitation and/or affordable new permanent housing activity for low- and moderate-income persons as a part of a multi-activity application do not have to provide any matching funds for the housing activity. This exception is for housing activities only. The TxCDBG does not consider sewer or water service lines and connections as housing activities. The TxCDBG also does not consider on-site wastewater disposal systems as housing activities. Demolition/clearance and code enforcement, when done in the same target area in conjunction with a housing rehabilitation activity, is counted as part of the housing activity. When demolition/clearance and code enforcement are proposed activities, but are not part of a housing rehabilitation activity, then the demolition/clearance and code enforcement are not considered as housing activities. Any additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities.

(i) ~~[(A)]~~ Applicants with populations equal to or less than 1,500 according to the 2000 census:

(I) ~~[(i)]~~ match equal to or greater than 5.0% of grant request--20 points;

(II) ~~[(ii)]~~ match at least 2.0% but less than 5.0% of grant request--10 points;

(III) ~~[(iii)]~~ match less than 2.0% of grant request--0 points.

(ii) ~~[(B)]~~ Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(I) ~~[(i)]~~ match equal to or greater than 10% of grant request--20 points;

(II) ~~[(ii)]~~ match at least 2.5% but less than 10% of grant request--10 points;

(III) ~~[(iii)]~~ match less than 2.5% of grant request--0 points.

(iii) ~~[(C)]~~ Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(I) ~~[(i)]~~ match equal to or greater than 15% of grant request--20 points;

(II) ~~[(ii)]~~ match at least 3.5% but less than 15% of grant request--10 points;

(III) ~~[(iii)]~~ match less than 3.5% of grant request--0 points.

(iv) ~~[(D)]~~ Applicants with populations over 5,000 according to the 2000 census:

(I) ~~[(i)]~~ match equal to or greater than 20% of grant request--20 points;

(II) ~~[(ii)]~~ match at least 5.0% but less than 20% of grant request--10 points;

(III) ~~[(iii)]~~ match less than 5.0% of grant request--0 points.

(E) ~~[(5)]~~ Project design (total--140 points). Each application is scored based on how the proposed project resolves the identified need and the severity of need within the applying jurisdiction. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund and in subparagraph (F) of this paragraph [paragraph (6) of this subsection]. Each application is scored by a committee composed of TxCDBG staff using the following information submitted in the application:

(i) ~~[(A)]~~ the severity of need within the colonia area(s) and how the proposed project resolves the identified need (additional consideration is given to water activities addressing impacts from drought conditions);

(ii) ~~[(B)]~~ the TxCDBG cost per low to moderate income beneficiary;

(iii) ~~[(C)]~~ the applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the Tx-CDBG community development fund or through community development block grant entitlement funds;

(iv) ~~[(D)]~~ the projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage;

(v) ~~[(E)]~~ the ability of the applicant to utilize the grant funds in a timely manner;

(vi) ~~[(F)]~~ the availability of grant funds to the applicant for project financing from other sources;

(vii) ~~[(G)]~~ whether the applicant, or the service provider, has waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries;

(viii) ~~[(H)]~~ whether the applicant's proposed use of TxCDBG funds is to provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program;

~~(ix)~~ [(+)] whether the applicant has already met its basic water and wastewater needs if the application is for activities other than water or wastewater;

~~(x)~~ [(+)] whether the project has provided for future funding necessary to sustain the project;

~~(xi)~~ [(K-)] whether the applicant has provided any local matching funds for administrative, engineering, or construction activities;

~~(xii)~~ [(L-)] the applicant's past performance on previously awarded TxCDBG contracts; and

~~(xiii)~~ [(M)] proximity of project site to entitlement cities or metropolitan statistical areas.

(F) [(6)] Project design scoring guidelines. Project design scores are assigned by Office staff using guidelines that first consider the severity of the need for each application activity and how the project resolves the need described in the application. The severity of need and resolution of the need determine the maximum project design score that can be assigned to an application. After the maximum project design score has been established, points are then deducted from this maximum score through the evaluation of the other project design evaluation factors until the maximum score and the point deductions from that maximum score determine the final assigned project design score. When necessary, a weighted average is used to set the maximum project design score to applications that include activities in the different severity of the need/project resolution maximum scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity is calculated. The percentage of the total TxCDBG construction dollars for each activity is then multiplied by the appropriate maximum project design point level. The sum of the calculations determines the maximum project design score that the applicant can be assigned before points are deducted based on the evaluation of the other project design factors.

(I) [(A-)] Maximum project design score that can be assigned based on the severity of the need and resolution of the problem.

(II) [(+)] Activities providing first-time public sewer service to the area--maximum score 140 points.

(III) [(+)] Activities providing first-time public water service to the area--maximum score 140 points.

(III) [(+)] Installation of approved residential on-site wastewater disposal systems providing first-time sewer service--maximum score 140 points.

(IV) [(+)] Installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues--maximum score 130 points.

(V) [(+)] Housing rehabilitation and eligible new housing construction--maximum score 130 points.

(VI) [(+)] Water activities addressing and resolving water supply shortage from drought conditions--maximum score 130 points.

(VII) [(+)] Water or sewer activities expanding or improving existing water or sewer system--maximum score 125 points.

(VIII) [(+)] Street paving activities providing first time surface pavement to the area--maximum score 100 points.

(IX) [(+)] Installation of designed drainage structures providing first time designed drainage system to the area--maximum score 100 points.

(X) [(+)] Reconstruction of streets with existing surface pavement--maximum score 90 points.

(XI) [(+)] Installation of improvements or drainage structures to a designed drainage system--maximum score 90 points.

(XII) [(+)] All other eligible activities--maximum score 80 points.

(ii) [(B)] TxCDBG cost per low to moderate income beneficiary. The total amount of TxCDBG funds requested by the applicant is divided by the total number of low to moderate income persons benefiting from the application activities to determine the Tx-CDBG cost per beneficiary.

(I) [(+)] Cost per low to moderate income beneficiary is equal to or less than \$2,000. Deduct zero points from the set maximum project design score.

(II) [(+)] Cost per low to moderate income beneficiary is greater than \$2,000 but equal to or less than \$4,000. Deduct 1 point from the set maximum project design score.

(III) [(+)] Cost per low to moderate income beneficiary is greater than \$4,000 but equal to or less than \$6,000. Deduct 2 points from the set maximum project design score.

(IV) [(+)] Cost per low to moderate income beneficiary is greater than \$6,000 but equal to or less than \$8,000. Deduct 3 points from the set maximum project design score.

(V) [(+)] Cost per low to moderate income beneficiary is greater than \$8,000 but equal to or less than \$10,000. Deduct 4 points from the set maximum project design score.

(VI) [(+)] Cost per low to moderate income beneficiary is greater than \$10,000 but equal to or less than \$11,000. Deduct 5 points from the set maximum project design score.

(VII) [(+)] Cost per low to moderate income beneficiary is greater than \$11,000 but equal to or less than \$13,000. Deduct 10 points from the set maximum project design score.

(VIII) [(+)] Cost per low to moderate income beneficiary is greater than \$13,000 but equal to or less than \$15,000. Deduct 15 points from the set maximum project design score.

(IX) [(+)] Cost per low to moderate income beneficiary is greater than \$15,000 but equal to or less than \$17,000. Deduct 20 points from the set maximum project design score.

(X) [(+)] Cost per low to moderate income beneficiary is greater than \$17,000 but equal to or less than \$19,000. Deduct 30 points from the set maximum project design score.

(XI) [(+)] Cost per low to moderate income beneficiary is greater than \$19,000. Deduct 40 points from the set maximum project design score.

(iii) [(C)] The applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the Tx-CDBG community development fund or through community development block grant entitlement funds.

(I) [(+)] The nonentitlement county submitted an application under the TxCDBG community development fund 2005/2006 biennial competition that was not addressing water, sewer,

and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(II) [(ii)] The nonentitlement county submitted an application under the TxCDBG community development fund 2003/2004 biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(III) [(iii)] The entitlement county did not use 2005 CDBG entitlement funds to address water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(IV) [(iv)] The entitlement county did not use 2004 CDBG entitlement funds to address water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(iv) [(D)] The projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage.

(I) [(i)] The projected water and/or sewer rates may be too high for the application beneficiaries. Deduct 1 point from the set maximum project design score.

(II) [(ii)] The projected water and/or sewer rates are too low to discourage water conservation by the application beneficiaries. Deduct 1 point from the set maximum project design score.

(v) [(E)] The ability of the applicant to utilize the grant funds in a timely manner.

(I) [(i)] The application includes the acquisition of real property, easements or rights-of-way. Deduct 1 point from the set maximum project design score.

(II) [(ii)] The application includes matching funds that have not been secured by the applicant. Deduct 1 point from the set maximum project design score.

(III) [(iii)] The proposed application target area is not located in an area where a service provider already has the certificate of convenience and necessity (CCN) needed to provide service to the application beneficiaries. Deduct 1 point from the set maximum project design score.

(vi) [(F)] The availability of grant funds to the applicant for project financing from other sources. Grant funds for any activity included in the application are available from another source. Deduct 1 point from the set maximum project design score.

(vii) [(G)] The applicant, or the service provider, has not waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries.

(I) [(i)] Assessments and fees budgeted in the application are equal to or less than \$100 per low and moderate income household. Deduct 2 points from the set maximum project design score.

(II) [(ii)] Assessments and fees budgeted in the application are greater than \$100 but equal to or less than \$200 per low and moderate income household. Deduct 4 points from the set maximum project design score.

(III) [(iii)] Assessments and fees budgeted in the application are greater than \$200 but equal to or less than \$300 per low and moderate income household. Deduct 6 points from the set maximum project design score.

(IV) [(iv)] Assessments and fees budgeted in the application are greater than \$300 but equal to or less than \$500 per low and moderate income household. Deduct 8 points from the set maximum project design score.

(V) [(v)] Assessments and fees budgeted in the application are greater than \$500 per low and moderate income household. Deduct 10 points from the set maximum project design score.

(viii) [(H)] Applicant's proposed use of TxCDBG funds does not provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program. Deduct 2 points from the set maximum project design score.

(ix) [(I)] The application is for activities other than water or wastewater and the applicant has not already met its basic water and wastewater needs. Deduct 3 points from the set maximum project design score.

(x) [(J)] The applicant has not documented that future funding necessary to sustain the project is available. Deduct 3 points from the set maximum project design score.

(G) [(7)] Past performance. An applicant receives from zero to ten points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. TxCDBG staff may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. An applicant that has never received a TxCDBG grant award will automatically receive these points. TxCDBG staff will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance on TxCDBG contracts after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may include, but is not necessarily limited to the following:

(i) [(A)] The applicant's completion of the previous contract activities within the original contract period.

(ii) [(B)] The applicant's submission of the required close-out documents within the period prescribed for such submission.

(iii) [(C)] The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.

(iv) [(D)] The applicant's timely response to audit findings on previous TxCDBG contracts.

(v) [(E)] The applicant's submission of all contract reporting requirements such as quarterly progress reports, certificates of expenditures, and project completion reports.

(H) Colonia Construction Component Marginal Applicant. The marginal applicant is the applicant whose score is high enough for partial funding of the applicant's original grant request. If the marginal amount available to this applicant is equal to or more than the Colonia Construction Component grant minimum of \$75,000, the marginal applicant may scale down the scope of the original project design, and accept the marginal amount, if the reduced project is still feasible. In the event that the marginal amount remaining in the Colonia Construction Component allocation is less than \$75,000, then the remaining funds will be used to either fund a Colonia Planning Fund application or will be reallocated to other established TxCDBG fund categories.

(2) [(g)] Colonia area planning component (340 Total Points Maximum) [Selection criteria (colonia area planning fund)]. The following is an outline of the selection criteria used by the Office for scoring applications for eligible planning activities under this fund. Three hundred forty points are available.

(A) [(H)] Community distress (total--up to 35 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(i) [(A)] Percentage of persons living in poverty--15 points

(ii) [(B)] Per capita income--10 points

(iii) [(C)] Percentage of housing units without complete plumbing--5 points

(iv) [(D)] Unemployment Rate--5 points

(B) [(2)] Benefit to low and moderate income persons (total--30 points). Points are awarded based on the low and moderate income percentage for all of the colonia areas where project activities are located according to the following scale:

(i) [(A)] 100% to 90% of funds benefiting low to moderate income persons--30 points

(ii) [(B)] 89.99% to 80% of funds benefiting low to moderate income persons--25 points

(iii) [(C)] 79.99% to 70% of funds benefiting low to moderate income persons--20 points

(iv) [(D)] 69.99% to 60% of funds benefiting low to moderate income persons--15 points

(v) [(E)] Below 60% of funds benefiting low to moderate income persons--5 points

(C) [(3)] Project design (total--255 points). Each application is scored based on how the proposed planning effort resolves the identified need and the severity of need within the applying jurisdiction. A colonia planning fund application must receive a minimum score for the project design selection factor of at least 70 percent of the maximum number of points available under this factor to be considered for funding. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund. Each application is scored by TxCDBG staff using the following information submitted in the application:

[(A)] the severity of need within the colonia area(s) (total--up to 60 points);

(i) Evidence of severity of need as described in originally received application (total--up to 10 points).

(ii) Applicant provides documentation that proposed colonia(s) is/are ranked high that is, within the top five colonias in its "comprehensive plan" as submitted to the TxCDBG (up to 30

points) [Primary need within all target area colonia(s) generally as reported in originally received application (total--up to 20 points);]

20 points) [(iii)] [(H)] all target area colonia(s) not platted (up to

to 20 points) [(iv)] [(H)] all target area colonia(s) with no water (up

to 20 points) [(v)] [(H)] all target area colonia(s) with no wastewater (up to 20 points)

[(vi)] [(V)] all or some target area colonia(s) are partially platted or platted but not recorded (up to 10 points)

[(vii)] [(V)] target area colonia(s) partial water (up to 10 points)

[(viii)] [(V)] target area colonia(s) partial sewer (up to 10 points)

[(ix)] [(H)] Population (total--10 points). The change in county population from 1990 and current HUD estimate [2000] is between:

(I) greater than 5% but less than or equal to 10% (2 points)

(II) greater than 10% but less than or equal to 15% (4 points)

(III) greater than 15% but less than or equal to 20% (6 points)

(IV) greater than 20% but less than or equal to 25% (8 points)

(V) greater than 25% (10 points)

[(x)] [(iv)] Needs are clearly identified in original application by priority through a community needs assessment (total--up to 5 points).

[(xi)] [(v)] Evidence provided in the original application of [strong] citizen input or known citizen involvement in addressing need (total--up to 15 [5] points).

[(xii)] Evidence provided in the original application of effort to notify special groups to solicit information on severity of need (total--up to 5 points);-

[(xiii)] [(vii)] Evidence provided in the original application that the public hearings to solicit input on needs were performed as described in the application guide (total--up to 28 [5] points).

[(B)] how clearly the proposed planning effort removes barriers to the provision of public facilities to the colonia area(s) and results in a strategy to resolve the identified needs (total--up to 60 points);]

[(xiii)] [(H)] Proposed planning efforts as described in the application are clear, concise and reasonable (total--up to 20[15] points).

[(iv)] Proposed target area is clearly defined in the application (total--up to 15 points);-

[(v)] Proposed planning efforts as described in the application match the needs in the target area (total--up to 15 points);-

[(vi)] Evidence in the application that the county is organized to implement the plan or would ensure that the plan is implemented (total--up to 15 points);-

~~{(C) the planning activities proposed in the application (total—up to 65 points);}~~

~~{(xiv) [(i)] The description of planning activity in the original application:~~

~~{(I) Originally submitted TABLE 1 requests eligible activities (3 points);}~~

~~{(II) Originally submitted TABLE 1 proposes an inventory, analysis and plan or an eligible activity not previously funded through the Colonia Fund (3 points);}~~

~~{(III) Originally submitted TABLE 1 addresses identified needs (3 points);}~~

~~{(IV) Originally submitted TABLE 1 activities match Table 2 planning elements (3 points);}~~

~~{(V) Originally submitted TABLE 1 describes or indicates an implementable strategy, for example, a capital improvements plan or other method (3 points).}~~

~~{(i) Describes eligible activities (total—up to 7 points);}~~

~~{(ii) Describes understanding of plan process (total—up to 7 points);}~~

~~{(iii) Addresses identified needs (total—up to 7 points);}~~

~~{(iv) Appears to result in solution to problems (total—up to 7 points);}~~

~~{(v) Indicates a strategy that can be implemented (total—7 points);}~~

~~{(xv) All proposed activities will be conducted on a colonia-wide basis (10 points).}~~

~~{(xvi) The extent to which any previous planning efforts for colonia areas have been accomplished. Applicant was a previous recipient of Colonia Planning Funds and through implementation of previously funded activities a colonia has been eliminated from colonia status (water, wastewater and housing needs have been provided for). Evidence such as a resolution of the commissioner's court that county has eliminated a colonia from the original colonia list in the comprehensive study or the OAG list thus indicating that the county is organized to implement the plan or would ensure that the plan is implemented. Points will be awarded if applicant is a previous recipient of a Colonia Comprehensive Planning Fund award and certifies completion of all of a colonia's needs since the colonia's problems were last studied (25 points).}~~

~~{(ii) Considering the applicant's probable capability, the Colonia Questionnaire in the original application indicates an attempt to control problems and the original submission was complete (total—up to 10 points);}~~

~~{(iii) Applicant has indicated in the application that a capital improvement programming process is routinely accomplished or will be developed as part of the planning project (total—up to 10 points);}~~

~~{(iv) Applicant's responses to questions in the originally submitted application appear to indicate that the applicant will produce a valid Capital Improvements Program that would draw on local resources and other grant/loan programs (total—up to 10 points);}~~

~~{(D) whether each proposed planning activity is conducted on a colonia-wide basis (total—up to 10 points). All proposed activities will be conducted on a colonia-wide basis (up to 10 points);}~~

~~{(E) the extent to which any previous planning efforts for colonia areas have been accomplished (total—up to 12 points). Applicant was a previous recipient of Colonia Planning Funds and some implementation of previously funded activities or special or extenuating circumstances prohibiting implementation exist. Points will be awarded if applicant is not a previous recipient of a Colonia Planning Fund award. Points will not be awarded if applicant did not implement previously funded activities and no special or extenuating circumstances prohibiting implementation exist;}~~

~~{(F) the TxCDBG cost per low to moderate income beneficiary;}~~

~~{(xvii) [(i)] TxCDBG cost per low to moderate income beneficiary (total—15 points):}~~

~~{(I) the TxCDBG cost per low to moderate income beneficiary is at least 50 percent below the median cost per beneficiary of all eligible applicants (15 points); or}~~

~~{(II) the TxCDBG cost per low to moderate income beneficiary is at or below the median cost per beneficiary of all eligible applicants (10 points); or}~~

~~{(III) the TxCDBG cost per low to moderate income beneficiary is below 150 percent of the median cost per beneficiary of all eligible applicants (7 points); or}~~

~~{(IV) the TxCDBG cost per low to moderate income beneficiary is 150 percent or greater than the median cost per beneficiary of all eligible applicants (5 points).}~~

~~{(ii) Amount requested originally appears to be reasonable and relates to the described needs with respect to the location and characteristics of the proposed target area (up to 15 points);}~~

~~{(xviii) [(G)] the availability of grant funds to the applicant for project financing from other sources [(total—6 points)]. The area would be eligible for funding under the Texas Water Development Board's Economically Distressed Areas Program (EDAP) or other programs as described in the original application (total—6 points); and}~~

~~{(ix) [(H)] the applicant's past performance on prior TxCDBG contracts. An applicant can receive from zero to twelve points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. The TxCDBG may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may include, but is not necessarily limited to the following:~~

~~{(I) [(i)] The applicant's completion of the previous two most recent contracts contract activities within the original contract period (up to 3 points).}~~

~~{(II) [(ii)] The applicant's submission of the required close-out documents for aforementioned contracts within the period prescribed for such submission (up to 3 points).}~~

~~{(III) [(iii)] The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any}~~

instances when the monitoring findings included disallowed costs (up to 3 points).

~~(IV)~~ ~~[(iv+)]~~ The applicant's timely response to audit findings on previous TxCDBG contracts (up to 3 points).

~~(D)~~ ~~[(+)]~~ Matching funds (total--20 points). The population category under which county applications are scored is based on the actual number of beneficiaries to be served by the colonia planning activities.

~~(i)~~ ~~[(A+)]~~ Applicants with populations equal to or less than 1,500 according to the 2000 census:

~~(I)~~ ~~[(+)]~~ match equal to or greater than 5.0% of grant request--20 points;

~~(II)~~ ~~[(+)]~~ match at least 2.0% but less than 5.0% of grant request--10 points;

~~(III)~~ ~~[(+)]~~ match less than 2.0% of grant request--0 points.

~~(ii)~~ ~~[(B+)]~~ Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

~~(I)~~ ~~[(+)]~~ match equal to or greater than 10% of grant request--20 points;

~~(II)~~ ~~[(+)]~~ match at least 2.5% but less than 10% of grant request--10 points;

~~(III)~~ ~~[(+)]~~ match less than 2.5% of grant request--0 points.

~~(iii)~~ ~~[(C+)]~~ Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

~~(I)~~ ~~[(+)]~~ match equal to or greater than 15% of grant request--20 points;

~~(II)~~ ~~[(+)]~~ match at least 3.5% but less than 15% of grant request--10 points;

~~(III)~~ ~~[(+)]~~ match less than 3.5% of grant request--0 points.

~~(iv)~~ ~~[(D+)]~~ Applicants with populations over 5,000 according to the 2000 census:

~~(I)~~ ~~[(+)]~~ match equal to or greater than 20% of grant request--20 points;

~~(II)~~ ~~[(+)]~~ match at least 5.0% but less than 20% of grant request--10 points;

~~(III)~~ ~~[(+)]~~ match less than 5.0% of grant request--0 points.

~~(E)~~ The marginal applicant is the applicant whose score is high enough for partial funding of the applicant's original grant request. The marginal applicant may scale down the scope of the original project design, and accept the marginal amount, if the reduced project is still feasible. Any unobligated funds remaining in the Colonia Area Planning allocation will be reallocated to either fund additional Colonia Comprehensive Planning applications, Colonia Construction Component applications, or will be reallocated to other established TxCDBG fund categories.

~~(3)~~ ~~[(+)]~~ Colonia construction component (200 Total Points Maximum). [Selection criteria (colonia comprehensive planning fund).] The following is an outline of the selection criteria used by the Office for scoring applications for eligible planning activities under this fund. Two hundred points are available.

~~(A)~~ ~~[(+)]~~ Community distress (total--25 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

~~(i)~~ ~~[(A+)]~~ Percentage of persons living in poverty--10 points

~~(ii)~~ ~~[(B+)]~~ Per capita income--5 points

~~(iii)~~ ~~[(C+)]~~ Percentage of housing units without complete plumbing--5 points

~~(iv)~~ ~~[(D+)]~~ Unemployment Rate--5 points

~~(B)~~ ~~[(+)]~~ Project design (total--175 points). A colonia planning fund application must receive a minimum score for the project design selection factor of at least 70 percent of the maximum number of points available under this factor to be considered for funding. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund. Each application is scored by the Office staff using the following information submitted in the application:

~~(i)~~ ~~[(A+)]~~ the severity of need for the comprehensive colonia planning effort and how effectively the proposed comprehensive planning effort will result in a useful assessment of colonia populations, locations, infrastructure conditions, housing conditions, and the development of short-term and long-term strategies to resolve the identified needs [(total--140 points)];

~~(I)~~ ~~[(+)]~~ Evidence of severity of need as described in originally received application (total--100 [(+)] points).

~~(II)~~ ~~[(+)]~~ Population (total--10 points). The change in county population from 1990 to current HUD estimate [and 2000] is between:

~~(-a-)~~ ~~[(+)]~~ greater than 2% [~~5%~~] but less than or equal to 4% [~~10%~~] (2 points).

~~(-b-)~~ ~~[(+)]~~ greater than 4% [~~10%~~] but less than or equal to 6% [~~15%~~] (4 points).

~~(-c-)~~ ~~[(+)]~~ greater than 6% [~~15%~~] but less than or equal to 8% [~~20%~~] (6 points).

~~(-d-)~~ ~~[(+)]~~ greater than 8% [~~20%~~] but less than or equal to 10% [~~25%~~] (8 points).

~~(-e-)~~ ~~[(+)]~~ greater than 10% [~~25%~~] (10 points).

~~[(+)]~~ the county population in 2000 (total--10 points);

~~[(+)]~~ the county population is at least 50 percent below the median county population of all eligible applicants (10 points);

~~[(+)]~~ the county population is at or below the median county population of all eligible applicants (7 points);

~~[(+)]~~ the county population is below 150 percent of the median county population of all eligible applicants (5 points);

~~[(iv)]~~ the county population is 150 percent or greater than the median county population of all eligible applicants (2 points);

~~[(iii)]~~ [(iv)] Needs are clearly identified in original application by priority through a community needs assessment (total--2 [5] points);

~~[(iv)]~~ [(v)] Evidence provided in the original application of [strong] citizen input or known citizen involvement in addressing need (total--2 [5] points);

~~[(vi)]~~ Evidence provided in the original application of effort to notify special groups to solicit information on severity of need (total--5 points);

~~[(v)]~~ [(vii)] Evidence provided in the original application that the public hearings to solicit input on needs were performed as described in the application guide (total--18 [5] points);

~~[(vi)]~~ [(viii)] Proposed planning efforts as described in the application are clear, concise and reasonable (total--2 [10] points).

~~[(vii)]~~ [(ix)] Proposed planning efforts as described in the application match the needs in the target area (total--2 [25] points).

~~[(viii)]~~ [(x)] Evidence in the application that the county is organized to implement the plan or would ensure that the plan is implemented (total--2 [20] points).

~~[(ix)]~~ [(xi)] The description of planning activity in the original application:

~~[-a-]~~ [(1)] Describes eligible activities (total--1 point [5 points]).

~~[-b-]~~ [(2)] Describes understanding of plan process (total--1 point [5 points]).

~~[-c-]~~ [(3)] Addresses identified needs (total--1 point [5 points]).

~~[-d-]~~ [(4)] Appears to result in solution to problems (total--1 point [5 points]).

~~[-e-]~~ [(5)] Indicates a strategy that can be implemented (total--1 point [5 points]).

~~[(x)]~~ [(xii)] Considering the applicant's probable capability, the Colonia Questionnaire in the original application indicates an attempt to control problems and the original submission was complete (total--3 [10] points).

~~[(ii)]~~ [(B)] the extent to which any previous planning efforts for colonia areas have been implemented (total--5 [10] points). Applicant was a previous recipient of Colonia Planning Funds and some implementation of previously funded activities or special or extenuating circumstances prohibiting implementation exist. Points will be awarded if applicant is not a previous recipient of a Colonia Planning Fund award. Points will not be awarded if applicant did not implement previously funded activities and no special or extenuating circumstances prohibiting implementation existed;

~~[(iii)]~~ [(C)] whether the applicant provides any local matching funds for project activities. (total--12 [13] points). [The population category under which county applications are scored is based on the actual number of beneficiaries to be served by the colonia planning activities;]

~~[(i)]~~ At least 20% of TxCDBG requested amount match--12 points.

~~[(ii)]~~ At least 15% of TxCDBG requested amount but less than 20% match--9 points.

~~[(iii)]~~ At least 10% of TxCDBG requested amount but less than 15% match--6 points.

~~[(iv)]~~ At least 5% of TxCDBG requested amount but less than 10% match--3 points.

~~[(v)]~~ Under 5% of TxCDBG requested amount match--0 points.

~~[(vi)]~~ Applicants with populations equal to or less than 1,500 according to the 2000 census;]

~~[(i)]~~ match equal to or greater than 5.0% of grant request--13;]

~~[(ii)]~~ match at least 2.0% but less than 5.0% of grant request--7;]

~~[(iii)]~~ match less than 2.0% of grant request--0;]

~~[(iv)]~~ Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census;]

~~[(i)]~~ match equal to or greater than 10% of grant request--13;]

~~[(ii)]~~ match at least 2.5% but less than 10% of grant request--7;]

~~[(iii)]~~ match less than 2.5% of grant request--0;]

~~[(iv)]~~ Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census;]

~~[(i)]~~ match equal to or greater than 15% of grant request--13;]

~~[(ii)]~~ match at least 3.5% but less than 15% of grant request--7;]

~~[(iii)]~~ match less than 3.5% of grant request--0;]

~~[(iv)]~~ Applicants with populations over 5,000 according to the 2000 census;]

~~[(i)]~~ match equal to or greater than 20% of grant request--13;]

~~[(ii)]~~ match at least 5.0% but less than 20% of grant request--7;]

~~[(iii)]~~ match less than 5.0% of grant request--0; and]

~~[(iv)]~~ [(D)] the applicant's past performance on previously awarded TxCDBG contracts. An applicant can receive from zero to twelve points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. The Tx-CDBG may also assess the applicant's performance on existing Tx-CDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:

~~[(i)]~~ [(i)] The applicant's completion of the previous contract, two most recent TxCDBG contracts contract activities within the original contract period (up to 3 points).

(II) [(ii)] The applicant's submission of the required close-out documents for aforementioned contracts within the period prescribed for such submission (up to 3 points).

(III) [(iii)] The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs (up to 3 points).

(IV) [(iv)] The applicant's timely response to audit findings on previous TxCDBG contracts (up to 3 points).

(f) [(f)] Program guidelines (colonia self-help centers legislative set-aside [~~fund~~]). The colonia self-help centers legislative set-aside [~~fund~~] is administered by the Texas Department of Housing and Community Affairs (TDHCA) under an interagency agreement with the Office. The following is an outline of the administrative requirements and eligible activities under this fund.

(1) The geographic area served by each colonia self-help center shall be determined by the Office or by the TDHCA. Five colonias located in each established colonia self-help center service area shall be designated to receive concentrated attention from the center. Each colonia self-help center shall set a goal to improve the living conditions of the residents located in the colonias designated for concentrated attention within a two-year period set under the contract terms. The Office and the TDHCA have the authority to make changes to the colonias designated for this concentrated attention.

(2) The Office's grant contract for each colonia self-help center is awarded and executed with the county where the colonia self-help center is located. Each county executes a subcontract agreement with a non-profit community action agency or a public housing authority.

(3) A colonia advisory committee is established and not fewer than five persons who are residents of colonias are selected from the candidates submitted by local nonprofit organizations and the commissioners court of a county where a self-help center is located. One committee member shall be appointed to represent each of the counties in which a colonia self-help center is located. Each committee member must be a resident of a colonia located in the county the member represents but may not be a board member, contractor, or employee of or have any ownership interest in an entity that is awarded a contract through the TxCDBG. The advisory committee shall advise the Office and the TDHCA regarding:

(A) the needs of colonia residents;

(B) appropriate and effective programs that are proposed or are operated through the centers; and

(C) activities that may be undertaken through the centers to better serve the needs of colonia residents.

(4) The purpose of each colonia self-help center is to assist low income and very low income individuals and families living in colonias located in the center's designated service area to finance, refinance, construct, improve or maintain a safe, suitable home in the designated service area or in another suitable area. Each self-help center may serve low income and very low income individuals and families by:

(A) providing assistance in obtaining loans or grants to build a home;

(B) teaching construction skills necessary to repair or build a home;

(C) providing model home plans;

(D) operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in colonias who are building or repairing a residence or installing necessary residential infrastructure;

(E) helping to obtain, construct, assess, or improve the service and utility infrastructure designed to service residences in a colonia, including potable water, wastewater disposal, drainage, streets and utilities;

(F) surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;

(G) providing credit and debt counseling related to home purchase and finance;

(H) applying for grants and loans to provide housing and other needed community improvements;

(I) monthly programs to educate individuals and families on their rights and responsibilities as property owners;

(J) providing other eligible services that the self-help center, with the Office's approval, determines are necessary to assist colonia residents in improving their physical living conditions, including help in obtaining suitable alternative housing outside of a colonia's area;

(K) providing assistance in obtaining loans or grants to enable an individual or family to acquire fee simple title to property that originally was purchased under a contract for a deed, contract for sale, or other executory contract; and

(L) providing access to computers, the internet, and computer training.

(5) A self-help center may not provide grants, financing, or mortgage loan services to purchase, build, rehabilitate, or finance construction or improvements to a home in a colonia if water service and suitable wastewater disposal are not available.

(g) [(g)] Selection criteria (colonia EDAP fund). The following is an outline of the application information evaluated by a committee composed of the Office's staff.

(1) The proposed use of the colonia EDAP funds including the eligibility of the proposed activities and the effective use of the funds to provide water or sewer connections/yard lines to water/sewer systems funded through the Texas Water Development Board Economically Distressed Area Program.

(2) The ability of the applicant to utilize the grant funds in a timely manner.

(3) The availability of grant funds to the applicant for project financing from other sources.

(4) The applicant's past performance on previously awarded TxCDBG contracts.

(5) Cost per beneficiary.

(6) Proximity of project site to entitlement cities or metropolitan statistical areas.

§255.11. *Small Towns Environment Program Fund.*

(a) - (f) (No change.)

(g) Selection criteria. The following is an outline of the selection criteria used by the Office for scoring applications under the STEP fund. One hundred twenty (120) points are available. A project must score at least 75 points overall and 15 points under the factor in paragraph (2) of this subsection to be considered for funding.

(1) - (2) (No change.)

(3) Past participation and performance (total--up to 15 points). An applicant receives up to 15 points on the following two factors.

(A) (No change.)

(B) An applicant can receive from zero to five points based on the applicant's past performance on previously awarded Tx-CDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two most recent Tx-CDBG contracts that have reached the end of the original contract period stipulated in the contract. The Tx-CDBG may also assess the applicant's performance on existing Tx-CDBG contracts that have not reached the end of the original contract period. Applicants that have never received a Tx-CDBG grant award will automatically receive these points. The Tx-CDBG will assess the applicant's performance on Tx-CDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may include, but is not necessarily limited to the following:

(i) The applicant's completion of the previous contract activities within the original contract period ~~[(total--2 points)]~~.

(ii) The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports, Certificates of Expenditures, and Project Completion Reports ~~[(total--1 point)]~~.

(iii) The applicant's submission of the required close-out documents within the period prescribed for such submission ~~[(total--1 point)]~~.

(iv) The applicant's timely response to monitoring findings on previous Tx-CDBG contracts especially any instances when the monitoring findings included disallowed costs and the applicant's timely response to audit findings on previous Tx-CDBG contracts ~~[(total--1 point)]~~.

(v) The applicant's timely response to audit findings on previous Tx-CDBG contracts.

(4) Percentage of savings off the retail price (total--up to 10 points). For STEP, the percentage of savings off of the retail price is considered a form of community match for the project. In STEP, a threshold requirement is a minimum of 40% savings off the retail price for construction activities. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for beneficiaries for the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. An applicant can receive from zero to 10 points based on the following population levels and savings percentages:

(A) Communities with populations equal to or less than 1,500 according to the 2000 census:

(i) 55% or more savings--10 points

(ii) 50% - 54.99% savings--9 points

(iii) 45% - 49.99% savings--7 points

(iv) 41% - 44.99% Savings--5 points

(B) Communities with populations above 1,500 but equal to or less than 3,000 according to the 2000 census:

(i) 55% or more savings--10 points

(ii) 50% - 54.99% savings--8 points

(iii) 45% - 49.99% savings--6 points

(iv) 41% - 44.99% Savings--3 points

(C) Communities with populations above 3,000 but equal to or less than 5,000 according to the 2000 census:

(i) 55% or more savings--10 points

(ii) 50% - 54.99% savings--7 points

(iii) 45% - 49.99% savings--5 points

(iv) 41% - 44.99% Savings--2 points

(D) Communities with populations above 5,000 but less than 10,000 according to the 2000 census:

(i) 55% or more savings--10 points

(ii) 50% - 54.99% savings--6 points

(iii) 45% - 49.99% savings--3 points

(iv) 41% - 44.99% Savings--1 point

(E) Communities with populations that are 10,000 or above 10,000 according to the 2000 census:

(i) 55% or more savings--10 points

(ii) 50% - 54.99% savings--5 points

(iii) 45% - 49.99% savings--2 points

(iv) 41% - 44.99% Savings--0 points

(5) Benefit to low/moderate income persons (total--up to 5 points). Applicants are required to meet the 51 percent low/moderate-income benefit for each activity as a threshold requirement. Any project where at least 60 percent of the Tx-CDBG funds benefit low/moderate-income persons will receive 5 points.

§255.17. Renewable Energy Demonstration Pilot Program.

(a) (No change.)

(b) Selection criteria. The projects will be selected on the following basis. Seventy points are available.

(1) - (5) (No change.)

(6) Leveraging--projects with committed funds from other entities including funding agencies, local governments, or businesses--Percent of portion of total project receiving Tx-CDBG funds is leveraged with other funds--50%--10 points; 25%--5 points; 10%--3 points; 5%--1 point].

(A) Applicant(s) population equal to or less than 2,500 according to the latest decennial Census:

(i) Match equal to or greater than 15% of grant request--10 points

(ii) Match at least 8% but less than 15% of grant request--5 points

(iii) Match at least 3%, but less than 8% of grant request--3 points

(iv) Match at least 2%, but less than 3% of grant request--1 point

(v) Match less than 2% of grant request--0 points

(B) Applicant(s) population equal to or less than 5,000 but over 2,500 according to the latest decennial Census:

(i) Match equal to or greater than 25% of grant request--10 points

(ii) Match at least 13% but less than 25% of grant request--5 points

(iii) Match at least 5%, but less than 13% of grant request--3 points

(iv) Match at least 3%, but less than 5% of grant request--1 point

(v) Match less than 3% of grant request--0 points

(C) Applicant(s) population equal to or less than 10,000 but over 5,000 according to the latest decennial Census:

(i) Match equal to or greater than 35% of grant request--10 points

(ii) Match at least 18% but less than 35% of grant request--5 points

(iii) Match at least 7%, but less than 18% of grant request--3 points

(iv) Match at least 4%, but less than 7% of grant request--1 point

(v) Match less than 4% of grant request--0 points

(D) Applicant(s) population over 10,000 according to the latest decennial Census:

(i) Match equal to or greater than 50% of grant request--10 points

(ii) Match at least 25% but less than 50% of grant request--5 points

(iii) Match at least 10%, but less than 25% of grant request--3 points

(iv) Match at least 5%, but less than 10% of grant request--1 point

(v) Match less than 5% of grant request--0 points

(E) The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for beneficiaries for the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county.

(7) Location in Rural Areas--Projects that benefit cities [cities] with populations under 10,000 and/or counties under 100,000--5 points.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 29, 2008.

TRD-200806717

Charles S. (Charlie) Stone

Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: February 8, 2009

For further information, please call: (512) 936-7887



10 TAC §§255.3, 255.10, 255.12 - 255.16

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of Rural Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under §487.052 of the Texas Government Code, which provides the Board with the authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposal.

§255.3. *Young v. Martinez Fund.*

§255.10. *Housing Fund.*

§255.12. *Microenterprise Fund.*

§255.13. *Small Business Fund.*

§255.14. *Section 108 Loan Guarantee Pilot Program.*

§255.15. *Community Development Supplemental Fund.*

§255.16. *Non-Border Colonia Fund.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 29, 2008.

TRD-200806718

Charles S. (Charlie) Stone

Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: February 8, 2009

For further information, please call: (512) 936-7887



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER HH. COMMISSIONER'S RULES CONCERNING EDUCATION IN A JUVENILE RESIDENTIAL FACILITY

19 TAC §89.1801

The Texas Education Agency (TEA) proposes new §89.1801, concerning education in a juvenile residential facility. In accordance with the Texas Education Code (TEC), §37.0062, the proposed new rule would adopt instructional requirements for education services provided by a school district or open-enrollment

SUMMARY

HUD's Neighborhood Stabilization Program

Presented by Mark Wyatt*

DISCUSSION

UPDATE – As of January 20, 2009:

This report provides an update of CDBG staff activities under the Neighborhood Stabilization Program (NSP).

Staff continues to meet frequently with the Texas Department of Housing and Community Affairs, which is the lead agency, along with the staff of the Texas State Affordable Housing Corporation (TSAHC) to work on implementing this program.

We are currently focusing on preparing the NSP Application and Guidelines and the NSP Notice of Funding Availability. The current goal is to take the draft documents to the TDHCA board meeting in February. We are working on the basis that HUD will ultimately approve our delivery concept and methodology as submitted in the Texas Action Plan amendment. Given that HUD have “disapproved” and required changes to the NSP Action Plans of several other states, all draft application material that is approved would be subject to HUD actions.

Application workshops are being planned across Texas with our participation. However, since the list of eligible communities is dependent on HUD approval of our Action Plan methodology, we have to factor HUD's timeline into our NSP announcement plans and other items on our timeline.

BACKGROUND INFORMATION:

NSP is a CDBG supplemental program authorized by the “Housing and Economic Recovery Act of 2008” (HERA). The purpose of the program is to acquire and redevelop foreclosed properties that might otherwise become sources of abandonment and blight. NSP provides funds to purchase foreclosed or abandoned homes and to rehabilitate, resell, or redevelop these homes in order to stabilize neighborhoods and stem the decline of house values of neighboring homes.

Congress used the established CDBG program as the delivery vehicle to speed up the delivery of these dollars, which avoided creating a new set of regulations and a new oversight agency. The current HUD CDBG staff who administer the regular CDBG state program will oversee this program.

Texas will receive approximately \$173 Million, approximately \$71 Million of which has already been identified by HUD as a direct allocation to 13 cities and counties with the greatest need. The Texas Department of Housing and Community Affairs, as the lead agency, will implement the NSP funds and will work in cooperation with ORCA and the Texas State Affordable Housing Corporation (TSAHC) to deliver and administer the remaining \$102 Million funds.

RECOMMENDATION

This report is provided to inform the Board. No action is required at this time.

RURAL DEFINITION

Non-entitlement cities with populations under 50,000 and counties under 200,000.

***Should a Board member have questions concerning this agenda item, please contact Mr. Wyatt at 512-936-6725 (mwyatt@orca.state.tx.us)**

SUMMARY

Status of the Proposed Action Plan for Disaster Recovery

Presented by Oralia Cardenas*

DISCUSSION

The public hearings for the Proposed Action Plan have been completed. The comment period ended January 5, 2009.

Status

- The State of Texas has received notice that we will receive an initial allocation of **\$1,314,990,193** for “necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing and economic revitalization in areas affected by hurricanes, floods, and other natural disasters occurring during 2008”.
- The appropriation mandates that \$139,595,563 (10.6%) of the allocation be awarded to support affordable rental housing. This portion will be managed by TDHCA.
- HUD has not issued the notice on program guidance to be published in the Federal Register. It is our understanding that some delay is expected as a result of the transition of the new administration.
- The Action Plan cannot be submitted to HUD until the HUD notice is published. Additional public hearings are not expected, but may be needed if substantial changes are necessary as a result of the HUD guidance.

Update

- Attached is a spreadsheet that provides additional distribution of funding from the planning set-aside to four regions based on comments received and to provide for viable projects in other regions.
- The planning set-aside has also been reduced to accommodate a request by TDHCA for a rental housing set-aside, which meets 4.48% of the overall 10.6% required by the appropriation language. The remaining 6.12% must be met at the COG level. The Action Plan provides language that will ensure that the State meets the overall percentage.
- The Action Plan has been modified to accommodate housing language and other technical revisions.

RECOMMENDATION

Provided for discussion purposes.

RURAL DEFINITION

Nonentitlement cities with populations under 50,000 and counties under 200,000.

***Should a Board member have questions concerning this agenda item, please contact Oralia Cardenas at 512-936-7890 (ocardenas@orca.state.tx.us).**

Region	Total Damage Assessment	Percent of Total Damage	Initial Allocation Amount	Additional Allocation Amount	Total Allocation
ATCOG	\$ 1,432,680.04	0.110711190%	\$ 1,164,673.03	\$ -	\$ 1,164,673.03
BVCOG	\$ 11,012,178.34	0.850972535%	\$ 8,952,164.30	\$ -	\$ 8,952,164.30
CBCOG	\$ 3,839,646.70	0.296710949%	\$ 3,121,375.90	\$ -	\$ 3,121,375.90
CTCOG	\$ 106,044.00	0.008194612%	\$ 86,206.68	\$ 163,793.32	\$ 250,000.00
DETCOG	\$ 72,958,907.44	5.637942331%	\$ 59,310,710.99	\$ -	\$ 59,310,710.99
ETCOG	\$ 11,347,579.80	0.876890879%	\$ 9,224,823.25	\$ -	\$ 9,224,823.25
GCRPC	\$ 403,000.00	0.031142061%	\$ 327,612.04	\$ 672,387.96	\$ 1,000,000.00
H-GAC	\$ 1,001,476,616.01	77.389692425%	\$ 814,133,492.62	\$ -	\$ 814,133,492.62
SETRPC	\$ 172,142,932.85	13.302446022%	\$ 139,940,688.49	\$ -	\$ 139,940,688.49
LRGVDC	\$ 18,878,598.15	1.458854736%	\$ 15,347,037.37	\$ 39,652,962.63	\$ 55,000,000.00
STDC	\$ 471,588.28	0.036442261%	\$ 383,369.72	\$ 616,630.28	\$ 1,000,000.00
	\$ 1,294,069,771.61		\$ 1,051,992,154.39	\$ 41,105,774.19	\$ 1,093,097,928.58
<u>Total Allocation</u>			\$ 1,314,990,193.00		
Administration		5.0%	\$ 65,749,509.65		
Original Planning		15.0%	\$ 197,248,528.95		
<u>Updated</u>					
Transfer of Planning Funds		7.60%	\$ 100,000,000.00		
Amended Planning Funds		7.40%	\$ 97,248,528.95		
TDHCA Affordable Rental Set Aside		4.48%	\$ 58,894,225.81		

Additional funds to be awarded based on the following tiered structure:

greater than or equal to \$15,000,000 in total damage minimum award:	\$55,000,000
greater than or equal to \$400,000 in total damage minimum award:	\$1,000,000
greater than or equal to \$100,000 in total damage minimum award:	\$250,000

SUMMARY
Status Report
Report on Contracted Activities with HNTB
Presented by Steve Swango*

DISCUSSION

Overview:

ORCA has hired the engineering firm, HNTB, to provide technical assistance and to assist non-entitlement communities in prioritizing and assessing projects for Hurricane Ike disaster recovery assistance. HNTB is a nationally recognized engineering firm with offices throughout Texas. The timeframe to get the projects identified, scoped, and estimated by March 31, 2009.

The contract was awarded for \$8,604,000. Payment of the contract will come from funds secured by the Governor's Office provided in a temporary transfer of \$6 million to fund the contract initially, to be reimbursed upon receipt of the Hurricane Ike funding. When the Hurricane Ike disaster grant funds are received, the remaining \$2,604,004 will be made available for services authorized in the HNTB contract. The engineering services provided under the contract are eligible CDBG planning activities.

HNTB has the resources and staff with the extensive knowledge necessary to assist ORCA in providing damage assessments, identifying gaps in other funding sources, and prioritizing infrastructure projects, while at the same time identifying special permits and clearances that may affect the timeline to get funded projects completed. ORCA expects that this standardized approach will help to provide uniformity and reliability in the development of damage assessments. The results of the engineering assessments to identify priorities at the community level will assist the regions in determining regional priorities for funding and will be incorporated in the application process.

Number of Communities to Assess	163
Number of Community Meetings held 1/21/09	94
Total Number of Eligible Projects Identified to Date	753

RECOMMENDATION

These reports are provided for information only.

RURAL DEFINITION

Nonentitlement cities with populations under 50,000 and counties under 200,000.

***Should an Executive Board member have questions concerning this agenda item, please contact Mr. Swango at 512-936-7895 (sswango@orca.state.tx.us).**

SUMMARY
Status Report
Supplemental CDBG Disaster Recovery Funds for
Round 1 & Round 2 –Non-Housing &
Infrastructure Funds
Presented by Heather Lagrone*

DISCUSSION

Overview:

This status report covers the portion of the Supplemental CDBG funds provided to Texas that were allocated to non-housing or infrastructure projects that ORCA is managing. The Texas Department of Housing and Community Affairs (TDHCA) was designated by the Governor as the lead agency in Texas. It is currently managing the delivery of the vast majority of the disaster recovery funds, which were allocated to housing. A breakdown by purpose and agency managing the funds is below.

Hurricane Rita Funds – Round 1

Housing (TDHCA):	\$41,795,655	
Non-housing (ORCA):	\$31,933,946	< =====
Unallocated :	<u>\$ 793,399</u>	
Total:	\$74,523,000	

Hurricane Rita Funds – Round 2

Housing (TDHCA):	\$384,461,323	
Infrastructure (ORCA):	\$ 44,100,000	< =====
Unallocated :	<u>\$ 110,526</u>	
Total:	\$428,671,849	

Hurricane Rita Funds – Round 1

(as of 12/31/08)

94 total contracts to communities (excludes COG contracts)

Amount Awarded: \$30,294,362

Amount Expended: \$26,898,391

Percentage Expended* 88.83%

*expended amount includes funds spent and draws pending in office

Hurricane Rita Funds – Round 2

(as of 12/31/08)

8 total contracts to communities

Amount Awarded: \$42,000,000

Amount Expended: \$ 6,659,001

Percentage Expended* 15.85%

*expended amount includes funds spent and draws pending in office

TDHCA and ORCA have executed an amendment to the Interagency Agreements for both Round 1 and Round 2 funding that provided for ORCA management to handle all non-housing / infrastructure funds.

RECOMMENDATION

These reports are provided for information only.

RURAL DEFINITION

Nonentitlement cities with populations under 50,000 and counties under 200,000.

***Should an Executive Board member have questions concerning this agenda item, please contact Ms. Lagrone at 512-936-6727 (hlagrone@orca.state.tx.us).**

Future ORCA Board Meeting Dates

2009

April 2-3	(Thursday – Friday)	Austin
June 4-5	(Thursday – Friday)	Austin
August 6-7	(Thursday – Friday)	Austin
October 1-2	(Thursday – Friday)	Austin
December 3-4	(Thursday – Friday)	Austin