

# TxCDBG Modified Procedures Public Health Emergency COVID-19

## Public Hearings

### Policy:

TxCDBG Project Implementation Manual Chapter 11 (Contract Amendments) and Chapter 12 (Contract Closeout), as well as TxCDBG Application Guides, require the Applicant/Grant Recipient to conduct public hearings to inform the community of a potential grant request, changes to an awarded grant, and completion of the grant-funded project. The Applicant/Grant Recipient must provide citizens with reasonable advance notice and opportunity to provide comment. Generally, the Texas Open Meetings Act requires such hearings to be held in a physical location open to the public.

### Recommendations for Social Distancing:

#### Conducting Public Meetings

Governor Abbot and HUD have both provided guidance on conducting virtual public meetings during this time when public gatherings are discouraged. Grant Recipients opting to hold telephone or web-based public hearings must ensure that:

- Members of the public will be entitled to participate and address the governmental body during any telephonic or videoconference meeting
- The governmental body must post a written notice that gives the public a way to participate remotely, such as a toll-free dial-in number, and that includes an electronic copy of any agenda packet that officials will consider at the meeting (see below). Electronic copies can be posted on the local government's website. TDA recommends also posting a paper notice at the location typically used for public hearings in the community that includes a link to the electronic packet or provides an email address where requests for the packet can be submitted.
- The governmental body must ensure that the public can ask questions and receive answers to all attendees in real time.
- The governmental body must ensure accessibility for persons with disabilities and persons with limited English proficiency.
- A governmental body must provide the public with access to a recording of any telephonic or videoconference meeting.
- If the local community is under a Stay Home order or similar action restricting the movement of most residents, the governmental body may opt to hold the virtual public hearing at a convenient time between 8:00am and 8:00pm.
- Governor's Proclamation: <https://gov.texas.gov/news/post/governor-abbott-allows-virtual-and-telephonic-open-meetings-to-maintain-government-transparency>

## CDBG Topics for Grantees

### Virtual Hearings

Q: Is there any guidance from HUD as to changes to public participation/hearing policies? May grantees suspend the onsite public participation hearings for the annual action plan? We have had several grantees contact us who have expressed concern about attending our mandatory public hearing this week, as they work with medically vulnerable populations.

A: If a grantee is concerned about significant public health risks that may result from holding in-person public hearings, the grantee may undertake a virtual public hearing (alone, or in concert with an in-person hearing) if it allows questions in real time, with answers coming directly from the elected representatives to all "attendees".

As with an in-person hearing, the grantee must select a virtual hearing method or platform that provides for accessibility for persons with disabilities and LEP to participate. The grantee must document its efforts and the reason for them, and update its citizen participation plan as soon as possible.

HUD understands the exigencies of a public health challenge and will not penalize a grantee who does its best to comply with citizen participation requirements and documents its efforts.

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### Publicizing Public Meetings

Public notice of the hearings must be given in one of the following ways:

- Published on applicant's website AND posted in accessible public places, visible by residents without entering any public building that is closed to the public (e.g. exterior of city hall/county courthouse) for at least seventy-two (72) hours prior to the scheduled hearing; or
- Published in a local newspaper at least seventy-two (72) hours prior to the scheduled hearing. (A published newspaper article may also be used to meet this requirement so long as it meets all content and timing requirements.)

The public notice must include the date, time, location, topics to be considered at the public hearing, and method of participation (if remote methods are used). Notices for public hearings to support grant applications should also be distributed to local Public Housing Authorities and other interested community groups. Grant applicants/recipients must maintain documentation verifying the method of public notification, such as a newspaper tear sheet, publisher's affidavit and copy of the notice, affidavits of posting, or screenshots of website postings.

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## **Construction / Labor Standards**

### **Policy:**

TxCDBG Project Implementation Manual Chapter 5 (Procurement Procedures) requires Grant Recipients to hold a public bid opening for sealed bid procurements, including publicizing the time and place for receiving and opening bids.

### **Recommendations for Social Distancing:**

Grant Recipients that modify their usual procedures to minimize interpersonal contact must document the revised procedure, including:

- a description of the revised procedures, which must allow all potential bidders to attend the public bid opening;
- the notification of the procedures provided to all potential bidders – either in the original bid publication or in an addendum to the bid package; and
- a letter from the Grant Recipient’s attorney confirming that the revised procedure complies with the Texas Local Government Code and the Texas Government Code.

### **Policy:**

TxCDBG Project Implementation Manual Chapter 7 (Labor Standards) requires the Labor Standards Officer (LSO) or designated local individual to attempt in-person interviews at the job site. If unsuccessful, the LSO must document the date(s) interviews were attempted. Only after attempting on-site interviews may the LSO resort to sending mailed questionnaires to the employees. The interview process exists to ensure contractors are complying with prevailing wage mandates under the Davis-Bacon Act; it’s a safeguard for the employee.

### **Recommendations for Social Distancing:**

- 1) If construction work is on-going, the LSO or designated interviewer may conduct interviews outdoors, with a safe distance between persons.
- 2) The LSO may document in the local labor standards files that they are not visiting with workers at construction sites due to personal and public health concerns; therefore, questionnaires will be mailed. TDA recommends including a brief cover letter explaining that the questionnaire is being sent in lieu of an interview at the construction site, which must be conducted according to federal labor policy for federally assisted construction projects.
  - The LSO must request worker mailing addresses from the prime contractor and any subcontractors.
  - The LSO must maintain documentation verifying that questionnaires were sent and should include a self-addressed stamped envelope for the respondent. Best practice: send the questionnaires through a return receipt verification method.
  - As with on-site interviews, questionnaires are used to test the accuracy of payrolls and to obtain the employee’s version of work conditions; therefore, they must remain confidential.
  - Although workers are not required to respond, the LSO must allow sufficient time for response before completing the Final Wage Compliance Report.

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## Environmental Review

### Policy:

TxCDBG Project Implementation Manual Chapter 3 (Environmental Review) requires Grant Recipients to make the Environmental Review Record available to the public prior to finalizing the review, and to submit the Request for Release of Funds in a specific format with an original (wet ink) signature.

### Recommendations for Social Distancing:

#### Publishing Notices for Public Comment

The Responsible Entity (RE) must ensure that citizens and interested parties are duly notified of their opportunity to submit public comment in response to a Finding of No Significant Impact (FONSI) and/or a Notice of Intent to Request Release of Funds (NOI-RROF). Posted notices inside government buildings that are temporarily closed due to the pandemic do not satisfy the intent of 24 CFR §58.43 requirements. An RE must utilize effective methods for disseminating the FONSI and NOI-RROF, which comply with HUD and TDA public notification policies (see Chapter 3 of the TxCDBG Project Implementation Manual).

#### Public Availability of the ERR

During the National Emergency concerning COVID-19, the RE must work with the public to provide the ERR electronically or via U.S. mail upon request. The RE may also make the ERR available electronically on the official RE website. If the RE chooses to make the ERR available via email, U.S. mail, or online, the public notice should be updated to include the following language, as applicable:

*Additional project information is contained in the Environmental Review Record (ERR). The ERR will be made available to the public for review either electronically or by U.S. mail. Please submit your request by U.S. mail to \_\_\_\_\_ or by email to \_\_\_\_\_. The ERR can be accessed online at the following website \_\_\_\_\_.*

#### Accepting Public Comments

If the RE chooses to send the ERR to the public for review via U.S. mail, the RE should allow for flexibilities in the timing of the public comment period. For example, if a copy of the ERR is requested via U.S. mail on day 12 of the 15 day public comment period, the RE should allow enough time for the ERR to be mailed to the recipient and for the recipient to respond with comments. In this case, the RE should establish a timeframe for accepting comments with the person requesting the ERR. TDA will consider the comment period to be adequate, absent evidence to the contrary, if the comment period is extended to allow a minimum of seven days after the ERR is mailed to the requestor.

TDA recommends that REs use a centralized email address to include in the public notice using the following language:

*Comments must be submitted via email and shall be addressed to [City/County office] at [email address of that office]. Potential commenters should contact [City/County office] via email to verify the actual last day of the comment period.*

#### Submitting Objections

Due to many staff working remotely, any objections to the State's release of funds must now be sent via email during the objection period. The public notice should use the following language:

*Objections must be prepared and submitted via email in accordance with the required procedures (24 CFR Part 58, Sec. 58.76) and shall be addressed to TxCDBG Environmental Review Specialist at [CDBG\\_EnvReview@TexasAgriculture.gov](mailto:CDBG_EnvReview@TexasAgriculture.gov). Potential objectors should contact the same email to verify the actual last day of the objection period.*

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### Section 106 Consultation

The Texas Historical Commission (THC) requests that most communications regarding Section 106 reviews be submitted directly to the THC via the etrac system at <https://www.thc.texas.gov/etrac-system>. Timeframes in 36 CFR 800 remain in effect for THC, although THC urges flexibility if SHPOs, THPOs, and Tribes are having trouble meeting 30-day deadlines. TDA may allow extension of deadlines for SHPO/THPOs that are experiencing office closures or staff reductions due to COVID-19.

Should you have any questions regarding these procedures, please contact Pamela Wozniak, TDA Environmental Specialist, at [CDBG\\_EnvReview@TexasAgriculture.gov](mailto:CDBG_EnvReview@TexasAgriculture.gov).

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## Grant Contract Closeout

### Policy:

TxCDBG Project Implementation Manual Chapter 12 (Contract Closeout) requires Grant Recipients to hold a closeout public hearing after the project engineer has confirmed that all work has been completed.

### Recommendations for Social Distancing:

Grant Recipients that have implemented social distancing policies, or whose procured project engineer is unable to observe the project site to verify the work completed as a result of travel restrictions, may submit a Project Completion Report that indicates the project is “Conditionally Complete”.

- There is no change to the date the PCR is due.
- The Grant Recipient should obtain written documentation from the Construction Contractor of the date work was completed.
- The final inspection must be completed within thirty (30) days of travel restrictions or Stay Home orders being lifted. TDA may provide additional guidance or due dates as the emergency situation evolves.
- If the final inspection reveals additional work to be performed, other than minor “punch list” items, the Grant Recipient may be responsible for those costs. During this public health emergency, TDA will not consider minor corrections identified in the final inspection to be work performed after the contractors “work complete” date. If the final inspection identifies work NOT completed during the contract period, contact your Contract Specialist for technical assistance.

### PROJECT COMPLETION REPORT A1200

*Grant Recipient Name*

*Contract Number*

Grant Recipient Name:  Contract No:  Region:    
 Contract Start Date:  Contract End Date:  DUNS No.

#### Part I. General Reports

**Total Persons Benefitting:** Total Contract Beneficiaries:  Low-to-Moderate Income Beneficiaries:

#### Certificate of Expenditures:

Activity	TxCDBG Funds	TxCDBG Funds Drawn To-Date	TxCDBG Funds not Processed (including pending draws)		Match Funds	Additional Local Funds	Percent Matched
			TxCDBG Reserved Funds <small>ALL draws must be received within 60 days of contract end date.</small>	Unutilized Funds (Deob)			
Total							0 %

Note: if a contract activity is not listed, click on the Activity field and type in the needed Activity name

For Reserved Funds, list specific costs

Project Completion Status:  Complete  Conditionally Complete

Type of Regulatory Approval Needed:

Regulatory Agency:  Date Submitted:

Other Condition to be resolved:  Final Inspection to be completed once travel restrictions lifted

Date Conditional Completion Approved by TDA:

"The national objective and project description has not been confirmed. This Project Completion Report certified the completion of construction ONLY."

<input type="checkbox"/> Original Submittal	<input type="checkbox"/> Revision	Date revised: <input type="text"/>
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## **Income Surveys**

### **Policy:**

TxCDBG Survey Methodology Manual requires Applicants / Grant Recipients as necessary to document a project's benefit to low- to moderate-income persons using either Census data or door-to-door income surveys.

### **Recommendations for Social Distancing:**

Applicants and Grant Recipients conducting income surveys may propose alternative methods for collecting this information by submitting a detailed description of the requested method to [CDBGApps@TexasAgriculture.gov](mailto:CDBGApps@TexasAgriculture.gov). Alternatives recently proposed include:

- Mailed questionnaires with self addressed stamped envelopes for residents to return surveys; and
- Telephone-based surveys