

## **CHAPTER 27 TEXAS FIRST TIME HOMEBUYER PROGRAM AND TAXABLE MORTGAGE PROGRAM RULES**

### **§27.1 Purpose**

(a) The purpose of the Texas First Time Homebuyer Program (FTHB) and Taxable Mortgage Program (TMP) is to facilitate the origination of single-family Mortgage Loans and/or to refinance existing Mortgage Loans for eligible ~~first time~~ Homebuyers, and to make available down payment and closing cost assistance to eligible Homebuyers. The FTHB Texas First Time Homebuyer Program is administered in accordance with Texas Government Code, Chapter 2306. Chapter 20 of this title (relating to the Single Family Programs Umbrella Rule) does not apply to the activities under this chapter, except if these activities are combined with activities subject to Chapter 20 of this title.

(b) Assistance under ~~these~~ is Programs is dependent, in part, on the availability of funds. The Department may cease offering all or a part of the assistance available under the programs at any time and in its sole discretion.

### **§27.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Participation Packet indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 2 of this title (relating to Enforcement).

(1) Applicable Median Family Income--The Department's determination, as permitted by Texas Government Code, §2306.123, of the median income of an individual or family for an area using a source or methodology acceptable under federal law or rule. The Applicable Median Family Income, as updated from time to time, may be found on the Department's website in the "Combined Income and Purchase Price Limits Table."

(2) Applicant--A person or persons applying for financing of a Mortgage Loan under the FTHB Program or TMP Program.

(3) Areas of Chronic Economic Distress--Those areas in the state, whether one or more, designated from time to time as areas of chronic economic distress by the state and approved by the U.S. Secretaries of Treasury and Housing and Urban Development, respectively, pursuant to §143(j) of the Code.

(4) Average Area Purchase Price--With respect to a Residence financed under the FTHB Program, the average purchase price of single-family residences in the statistical area in which the Residence is located which were purchased during the most recent twelve (12) month period for which statistical information is available, as determined in accordance with §143(e) of the Code.

~~¶~~(5) Code--The Internal Revenue Code of 1986, as amended from time to time.

(6) Contract for Deed Exception--~~—In the administration of the FTHB Program, ¶~~the exception for certain Mortgage Loan eligibility requirements under the FTHB Program or TMP, as provided in the Master Mortgage Origination Agreement, available with respect to a principal residence owned under a contract for deed by a person whose family income is not more than 50% of the area's Applicable Median Family Income.

(7) Federal Housing Administration--A division of the U.S. Department of Housing and Urban Development, also known as FHA.

~~(8) First Time Homebuyer--A person who has not owned a home during the three (3) years preceding the date on which an application under this program is filed. A person will be considered to have owned a home if the person had a present ownership interest in a home during the three (3) years preceding the~~

~~date on which the application was filed. In the event there is more than one person applying with respect to a home, each Applicant must separately meet this three year requirement.~~

(8) First Time Homebuyer--In the administration of the FTHB Program, a person who has not owned a home during the three (3) years preceding the date on which an application under the program is filed. A person, as defined in §2306.1071 of the Tex. Gov't Code, will be considered to have owned a home if the person had a present ownership interest in a primary residence during the three (3) years preceding the date on which an application under this program is filed. In the event there is more than one person applying for financing of a Mortgage Loan under the FTHB Program, each Applicant must separately meet this three year requirement.

(9) Homebuyer--An Applicant that is approved by either of the Programs and purchases a Residence.

(10) Master Mortgage Origination Agreement--The contract between the Department and a Mortgage Lender, together with any amendments thereto, setting forth certain terms and conditions relating to the origination and sale of Mortgage Loans by the Mortgage Lender and the financing of such Mortgage Loans by the Department under the FTHB Program and TMP.

(11) Mortgage Lender--The entity, as defined in §2306.004 of the Tex. Gov't Code, that is participating in either of the Programs and signatory to the Master Mortgage Origination Agreement.

(12) Mortgage Loan--as defined in §2306.004 of the Tex. Gov't Code.

~~(12)~~ (13) Participation Packet--The application submitted to the Department by the proposed Mortgage Lender to participate in either or both of the Programs.

~~(14)~~ (13) Programs--The Texas First Time Homebuyer (FTHB) Program and the Taxable Mortgage Program (TMP).

~~(15)~~ (14) Purchase Price Limit--In the administration of the FTHB Program, the Purchase Price Limits published and updated from time to time in the "Combined Income and Purchase Price Limits Table" found on the Department's website equal to 90% of the Average Area Purchase Price, subject to certain exceptions for Targeted Area Loans.

~~(16)~~ (15) Qualified Veteran Exemption to First Time Homebuyer Requirement-- In the administration of the FTHB Program, A qualified veteran who has not previously received financing as a First Time Homebuyer through a single family mortgage revenue bond program is exempt from the requirement to be a First Time Homebuyer. The veteran must certify that he or she has not previously obtained a Mortgage Loan financed by single family mortgage revenue bonds, and is utilizing the veteran exception set forth in §143(d)(2)(D) of the IRS Code. Qualified veterans must also complete a worksheet evidencing qualification as a veteran and provide copies of discharge papers.

(17) Regulations--The applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

(18) Residence--A dwelling in Texas in which an Applicant intends to reside as the Applicant's principal living space. This is intended to have the same meaning as Home as defined in §2306.1071 of the Tex. Gov't Code.

~~(19)~~ (16) Rural Housing Service--A division of the United States Department of Agriculture, also known as RHS.

~~(20)~~ (17) Targeted Area--A qualified census tract, as determined in accordance with §6(a)103A-(2)(b)(4) of the Regulations or any successor regulations thereto, or an Area of Chronic Economic Distress or in the case of the TMP a Department Designated Area of Special Need. Applicants purchasing in Targeted Areas may have higher income and purchase price limits as set forth in the "Combined Income and Purchase Price Limits Table" found on the Department's website.

(21) Targeted Area Exemption to First time Homebuyer Requirement--In the administration of the FTHB Program, Applicants purchasing homes in targeted areas financed through the program are exempt from the requirement to be a First Time Homebuyer and income and purchase price limits may be higher as found in the "Combined Income and Purchase Price Limits Table" located on the Department's website.

~~(22)~~ (18) United States Department of Veterans Affairs--Also known as VA.

### **§27.3 Restrictions on Residences Financed and Applicant**

(a) Type of Residence and Number of Units. To be eligible for assistance under the Programs ~~an Applicant must apply with respect to a Residence that is~~ must be either a new or existing single family residence, new or existing condominium or townhome, or manufactured housing that has been converted to real property in accordance with the Texas Occupations Code, Chapter 1201, or FHA and applicable agency guidelines, as required by the Department. A duplex may be financed under the Programs as long as one unit of the duplex is occupied by the Applicant as his or her Residence, and the duplex was first occupied for residential purposes at least five years prior to the closing of the Mortgage Loan.

(b) Homebuyer Education. Each Applicant must complete a Department approved pre-purchase homebuyer education course.

(c) Income Limits. An Applicant applying for a Mortgage Loan financed under the FTHB Program or TMP must meet Applicable Median Family Income requirements.

(d) Down Payment Assistance. An Applicant meeting the Applicable Median Family Income requirements in subsection (c) of this section may qualify for down payment and closing cost assistance in connection with the Mortgage Loan financed under the FTHB Program or TMP on a first come, first served basis, subject to availability of funds.

(e) Residential Property Standards. The Residence must meet all standards required by the State of Texas, local jurisdiction, and as required by agency guidelines and the Federal Mortgage Lender.

(f) Lien Position Requirements.

(1) A Mortgage Loan made by the Department shall be secured by a first lien on the real property if the Department's Mortgage Loan is the largest Mortgage Loan secured by the real property; or

(2) The Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan is at least 55% of the combined repayable or amortized loans; however, liens related to other subsidized funds provided in the form of grants and non-amortizing Mortgage Loans, such as deferred payment or Forgivable Loans, must be subordinate to the Department's payable Mortgage Loan; and

(3) For real property encumbered by deed restrictions governed by a property owners' association or homeowners' association, the association shall subordinate its assessment liens in the deed restrictions to the Department's Mortgage Loan.

### **§27.4 Occupancy and Use Requirements**

(a) Occupancy requirement. The Homebuyer must occupy the property within a reasonable time (not to exceed 60 days) after the date of closing as his or her Residence.

(b) Use for a business. Homebuyer may not use more than 15% of the Residence in a trade or business (including childcare services) on a regular basis for compensation. If the Residence is to be used, in part, for a trade or business, a schematic drawing from an appraiser must be provided.

(c) Homebuyer may not use the Residence, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home, and shall continue to occupy the Residence as Homebuyer's principal living space/primary residence, unless waived by the Executive Director or their designee for good cause, ~~which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Homebuyer's control.~~

(d) In the event the Homebuyer is in violation of this section, the deferred principal balance is due in full pursuant to the Mortgage Loan.

## §27.5 Application Procedure and Requirements for Commitments by Mortgage Lenders

(a) An Applicant seeking assistance under either of the Programs must first contact a participating Mortgage Lender. A list of participating Mortgage Lenders may be obtained on the Department's website or by contacting the Department.

(b) Applicant shall complete ~~an~~ Uniform Residential Loan Application (URLA) with a participating Mortgage Lender for the purpose of obtaining a Mortgage Loan.

(c) ~~Application Fees.~~ Fees that may be collected by the Mortgage Lender from the Applicant relating to a Mortgage Loan include:

(1) an appropriate, as determined by the Department, origination fee and/or buyer/seller points; and

~~(2) all usual and reasonable settlement or financing costs that are permitted to be so collected by FHA, RHS, VA, Freddie Mac or Fannie Mae, as applicable, and other applicable laws, but only to the extent such charges do not exceed the usual and reasonable amounts charged in the area in which the Residence is located. Such usual and reasonable settlement or financing costs shall include an application fee as determined by the Department, the total estimated costs of a credit report on the Applicants and an appraisal of the property to be financed with the Mortgage Loan, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and expenses, credit report fees, FHA insurance premiums, private Mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS guaranty fees, hazard or flood insurance premiums, abstract fees, tax service fees, recording or registration fees, escrow fees, and file preparation fees.~~

(2) all usual and reasonable settlement or financing costs permitted by FHA, RHS, VA, Freddie Mac, or Fannie Mae, as applicable, and otherwise permitted by applicable law, provided such charges do not exceed the usual and reasonable amounts charged in the area in which the Residence is located. Such settlement or financing costs may include Department-approved fees, application fees, credit report fees, credit reference fees, appraisal fees and expenses, property inspection fees, title insurance, survey fees, legal fees, escrow fees, recording or registration fees, tax service fees, abstract fees, file preparation fees, FHA insurance premiums, private mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS guaranty fees, hazard or flood insurance premiums, and other customary settlement or financing charges associated with the origination of the Mortgage Loan.

(d) The Department will determine from time to time, a schedule of fees and charges necessary for expenses and reserves of the housing finance division ~~as set forth in a Board resolution.~~

(e) The Mortgage Lender must register the Mortgage Loan in accordance with the Department's published procedures.

## §27.6 Criteria for Approving Participating Mortgage Lenders

(a) To be approved by the Department for participation in either or both of the Programs, a Mortgage Lender must meet the requirements in the Participation Packet to be a qualified Mortgage Lender as specified by:

(1) FHA;

(2) RHS;

(3) VA; or

(4) be a lender currently participating in the conventional home lending market for loans originated in accordance with Fannie Mae's and/or Freddie Mac's requirements.

(b) As a condition for participation in either or both of the Programs, a qualified Mortgage Lender must:

(1) agree to originate Mortgage Loans and assign those loans and related Mortgages and servicing to the Department's master servicer;

(2) originate, process, underwrite, close and fund originated loans; and

(3) be an approved Mortgage Lender with the Program's master servicer.

### **§27.7 Resale of the Residence**

Mortgage Loans that are financed with the proceeds of tax-exempt bonds, or for which a Mortgage Credit Certificate has been or will be issued, will be subject to federal income tax recapture provisions. Assumption of a Mortgage Loan is allowed under the Programs if the new owner meets the Programs' requirements at the time of the sale of the Residence.

### **§27.8 Conflicts with Bond Indentures and Applicable Law**

All assistance provided under the Programs is funded through or facilitated by the Department's mortgage revenue bond indentures and is subject to changes in the mortgage revenue bond indentures and applicable law. If there is a conflict between this chapter and any bond indenture or applicable law regarding the use of the funds from mortgage revenue bonds, the mortgage revenue bond indenture or applicable law shall control.

### **§27.9 Waiver**

The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the rules governing ~~these~~ Programs, except 10 TAC §27.8, if the Board finds that waiver is appropriate for good cause to fulfill the purposes or ~~policies~~ policies of Texas Government Code, Chapter 2306, as determined by the Board.