

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
**TDHCA Governing Board Approved Draft of
Proposed Amended
10 TAC, Chapter 23, Subchapter F
Tenant-Based Rental Assistance Program (“TBRA”) General Requirements, §23.61**

Disclaimer

Attached is a draft of proposed amendments to 10 TAC Chapter §23.61 concerning HOME Tenant-Based Rental Assistance General Requirements that was approved by the TDHCA Governing Board on April 26, 2018. This draft incorporates changes made by the Board as a result of public comment at the meeting. This document, including its preamble, is scheduled to be published in the May 11, 2018 edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment. The version herein is informational only and should not be relied upon as the basis for public comment.

Public Comment

Public Comment Period: Starts: 8:00 a.m. Austin local time on May 11, 2018 Ends: 5:00 p.m. Austin local time on June 11, 2018

Comments received after 5:00 p.m. Austin local time on June 11, 2018 will not be accepted.

Written comments may be submitted, in hard copy/fax or electronic formats to:

Texas Department of Housing and Community Affairs
Attn: Abigail Versyp
P.O. Box 13941
Austin, Texas 78711-3941
Fax: (512) 475-0220
Email: abigail.versyp@tdhca.state.tx.us

Written comments may be submitted in hard copy, fax, or email formats within the designated public comment period. Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 23, §23.61, concerning Subchapter F Tenant-Based Rental Assistance Program (“TBRA”) General Requirements. The purpose of the proposed amended section is two-fold. First is to remove requirements that are duplicative of requirements stated in the federal regulations governing the HOME Program, and second is to provide flexibility to Administrators of HOME TBRA funds as they relate to Administrative costs. The proposed amended section related to administrative costs will allow Administrators of HOME Program funds to have the option of selecting one of two methods of receiving administrative costs and soft costs for expenses related to provision of TBRA activities. Administrators will have the option to request reimbursement for Administrative costs equal to 4 percent of Direct Activity costs, excluding Match funds, and up to \$1,200 per activity in project soft costs; or reimbursement of Administrative costs equal to 8 percent of Direct Activity costs, excluding Match funds. In either case, Administrators may request reimbursement for Administrative funds up to an additional 1 percent of Direct Activity Costs if Match is provided in an amount equal to 5 percent or more of Direct Activity Costs.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amended section is in effect, enforcing or administering the amended section does not have any foreseeable implications related to costs or revenues for the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

The proposed rule does not create or eliminate a government program;

The proposed rule will not require a change in the number of employees of the Department;

The proposed rule will not require additional future legislative appropriations;

The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

The proposed rule will not create a new regulation;

The proposed rule will not expand, will not limit, or will not repeal an existing regulation;

The proposed rule will not increase or will not decrease the number of individuals subject to the rule’s applicability; and

Will neither positively or negatively affect this state’s economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amended sections. The amended sections remove duplicative regulations and allow administrators greater flexibility as to how they can request application intake, processing, and inspections costs, therefore there is no cost impact.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 11, 2018, to June 11, 2018, to receive input on the amended section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Abigail Versyp, HOME and Homeless Programs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220 or by email to the following address: HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time on June 11, 2018. A copy of the amended section will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The amendment is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendment affects no other code, article, or statute

§23.61. Tenant-Based Rental Assistance (TBRA) General Requirements.

- (a) The Household must participate in a self-sufficiency program.
- (b) The amount of assistance will be determined using the Housing Choice Voucher method.
- (c) Households certifying to zero income must also complete a questionnaire which includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.
- (d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's gross monthly income.
- (e) Activity funds are limited to:
 - (1) rental subsidy: Each rental subsidy term is limited to no more than twenty-four (24) months. Total lifetime assistance to a Household may not exceed thirty-six (36) months cumulatively, except that a maximum of twenty-four (24) additional months of assistance, for a total of sixty (60) months cumulatively may be approved if:
 - (A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and
 - (B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; and
 - (C) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and
 - (D) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.
 - (2) security deposit: no more than the amount equal to two (2) ~~month's~~ months rent for the unit.
 - (3) utility deposit in conjunction with a TBRA rental subsidy.

(f) The payment standard is determined at the date of assistance. The payment standard utilized by the Administrator must be:

(1) for metropolitan counties and towns, the current U.S. Department of Housing and Urban Development (HUD) Small Area Fair Market Rent for the Housing Choice Voucher Program;

(2) for nonmetropolitan counties and towns, the current HUD Fair Market Rent for the Housing Choice Voucher Program;

(3) for a HOME assisted unit, the current applicable HOME rent; or

(4) the Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in §1.204 of this title for a specific ~~household~~ Household if the ~~household~~ Household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

~~(g) The lease agreement start date must correspond to the date of the TBRA rental coupon contract, and the rent reasonable analysis must be conducted prior to the date of the TBRA rental coupon contract.~~

~~(h) Administrators must select the method under which funds for administrative costs and Activity soft costs may be reimbursed prior to execution of an RSP agreement or at Application for an award of funds. Administrators of an existing RSP Agreement may request an amendment to an existing Agreement in accordance with Section 23.1 of this Chapter. Applicants and Administrators may choose from one of the following options, and in any case funds for Administrative costs may be increased by an additional 1 percent of Direct Activity Costs if Match is provided in an amount equal to 5 percent or more of Direct Activity Costs:~~

~~(1) Funds for Administrative costs are limited to 4 percent of Direct Activity Costs, excluding Match funds, and Activity soft costs are limited to \$1,200 per Household assisted for. Activity soft costs may reimburse expenses for costs related to determining Household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area; or~~

~~(2) Funds for administrative/Administrative costs are limited to 48 percent of Direct Activity Costs, excluding Match funds. Funds for administrative costs, and Administrator may be increased an additional 1 percent of Direct not be reimbursed for Activity Costs if Match is provided in an amount equal to 5 percent or more of Direct Activity Costs soft costs.~~

~~(j) Rental units must be inspected prior to occupancy, annually upon Household recertification, and must comply with HQS established by HUD.~~

~~(k) Administrators must have a written agreement with Owner that the Owner will notify the Administrator within one (1) month if a tenant moves out of an assisted unit prior to the lease end date.~~

~~(l) Administrator must not approve a unit if the owner is by consanguinity, affinity, or adoption the parent, child, grandparent, grandchild, sister, or brother of any member of the assisted Household, unless the Administrator determines that approving the unit would provide Reasonable Accommodation for a Household member who is a Person with Disabilities. This restriction against Administrator approval of a unit only applies at the time the Household initially receives assistance under a Contract or Agreement, but does not apply to Administrator approval of a recertification with continued tenant-based assistance in the same unit.~~

~~(m) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with §10.610 of this title Title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (n) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in §10.610 of this title Title)) will govern.~~

~~(n) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the project Activity.~~

~~(6)~~ Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three (3) calendar days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.