

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

TDHCA Governing Board Approved Draft of:
Proposed new 10 TAC Chapter 26, Texas Housing Trust Fund Rule

Disclaimer

Attached is a draft of the proposed new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, which was approved by the TDHCA Governing Board on July 27, 2017. This document, including its preamble, is scheduled to be published in the August 11, 2017, 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 August 11, 2017.

Ends: 5:00 p.m. Austin local time on September 11, 2017.

Comments received after 5:00 p.m. Austin local time on September 11, 2017, will not be accepted. Written comments may be submitted in hard copy or electronic formats within the designated public comment period to:

Texas Department of Housing and Community Affairs
Attn: Homero Cabello, Director of Single Family Operations & Services
P.O. Box 13941
Austin, Texas 78711-3941
Email: htf@tdhca.state.tx.us

Those making public comments 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 TDHCA will be considered public information.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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**TITLE 10 COMMUNITY DEVELOPMENT
PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 26 TEXAS HOUSING TRUST FUND RULE**

SUBCHAPTER A GENERAL GUIDANCE

§26.1 Purpose

This chapter clarifies the administration of the Texas Housing Trust Fund Program (HTF). The HTF provides loans, grants or other comparable forms of assistance to income-eligible individuals, families and households. The HTF is administered in accordance with Texas Government Code, Chapter 2306, ~~and~~ Chapter 20 of this ~~Title~~ (relating to Single Family Programs Umbrella Rule), and Chapter 24 of this Title (relating to Texas Bootstrap Loan Program Rule).

§26.2 Definitions

Definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this ~~Title~~ (relating to Administration), Chapter 2 of this Title relating to Enforcement; ~~and~~ Chapter 20 of this ~~Title~~ (relating to Single Family Programs Umbrella Rule); Chapter 21 of this Title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 24 of this Title (relating to Texas Bootstrap Loan Program Rule), unless the context or the Notice of Funding Availability (NOFA) indicates otherwise.

§26.3 Allocation of Funds

- (a) The Department administers all HTF funds provided to the Department in accordance with Texas Government Code, Chapter 2306. The Department may solicit gifts and grants to endow the fund.
- (b) Pursuant to Texas Government Code, §2306.202(b), use of the HTF is limited to providing:
- (1) assistance for individuals and families of low and very low income;
 - (2) technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low and very low income;
 - (3) security for repayment of revenue bonds issued to finance housing for individuals and families of low and very low income; and
 - (4) subject to the limitations in Texas Government Code, §2306.251, the Department may also use the fund to acquire property to endow the fund.
- ~~(c) Regional Allocation. Funds shall be allocated to achieve broad geographic dispersion by awarding funds in accordance with Texas Government Code, §2306.111(d) and (g).~~
- ~~(c)(d)~~ Set-Asides. In accordance with Texas Government Code, §2306.202(a) and program guidelines:
- (1) in each biennium, the first \$2.6 million available through the HTF for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for Local Units of Government, Public Housing Authorities, and Nonprofit Organizations;
 - (2) any additional funds may also be made available to for-profit organizations provided that at least 45 percent of available funds, as determined on September 1 of each state fiscal year, in excess of the first \$2.6 million shall be made available to Nonprofit Organizations; and
 - (3) the remaining portion shall be distributed to Nonprofit Organizations, for-profit organizations, and other eligible entities, pursuant to Texas Government Code, §2306.202.

§26.4 Use of Funds

- (a) Use of additional or Deobligated Funds. In the event the Department receives additional funds, such as loan repayments, donations and interest earnings, the Department will redistribute the funds in accordance with the HTF plan in effect at the time the additional funds become available.
- (b) Reprogramming of Funds. If funding for a program is undersubscribed or funds not utilized, within a timeframe as determined by the Department, remaining funds may be reprogrammed at the discretion of the Department consistent with the HTF plan in effect at the time.

§26.5 Prohibited Activities

~~(a) Persons receiving or benefiting from HTF funds, as determined by the Department, may not be currently in delinquency or in default with child support and/or government loans.~~

~~(b)(a)~~ The activities described in paragraphs (1) - (7) of this subsection are prohibited in relation to the origination of a HTF loan, but may be charged as an allowable cost by a third (3rd) party lender for the origination of all other loans originated in connection with an HTF loan:

- (1) payment of delinquent property taxes or related fees or charges on properties to be assisted with HTF funds;
- (2) loan origination fees;
- (3) application fees;
- (4) discount fees;
- (5) underwriter fees;
- (6) loan processing fees; and
- (7) other fees not approved by the Department in writing prior to expenditure.

~~(b) Persons receiving or benefiting from HTF funds, as determined by the Department, may not be currently in delinquency or in default with child support and/or government loans.~~

§26.6 Administrator Eligibility and Requirements

~~(a)~~ Administrator must enter into an agreement with the Department in order to be eligible to access the Housing Trust Funds more fully described in the NOFA.

~~(b) Determination of annual income. The method used to determine annual income will be provided in the NOFA or program manual.~~

§26.7 Waiver

~~The Board, in its discretion and within the limits of the law, may waive any one or more of the requirements of this chapter if the Board finds that waiver is appropriate to fulfill the purposes or policies, Texas Government Code, Chapter 2306, or for good cause, as determined by the Board.~~

SUBCHAPTER B AMY YOUNG BARRIER REMOVAL PROGRAM

§26.20 Amy Young Barrier Removal Program Purpose

The Amy Young Barrier Removal Program (the “Program” or “AYBRP”) provides one-time grants of up to \$20,000 in combined Hard and Soft Costs to Persons with Disabilities in a Household qualified as Low-Income. Grants are for home modifications that increase accessibility, eliminate life-threatening hazards and correct unsafe conditions.

§26.21 Amy Young Barrier Removal Program Definitions

The following words and terms used in this Subchapter shall have the following meanings, unless the context clearly indicates otherwise. Other definitions are found in Texas Government Code, Chapter 2306, Chapter 1 of this Title (relating to Administration), Chapter 2 of this Title (relating to Enforcement), Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26, Subchapter A of this Title (relating to Housing Trust Fund).

- (1) Administration Fee – Funds equal to 10% of the Project Costs (combined Hard and Soft Costs) paid to an Administrator upon completion of a project.
- (2) Hard Costs – Site-specific costs incurred during construction, including but not limited to: general requirements, building permits, jobsite toilet rental, dumpster fees, site preparation, demolition, construction materials, labor, installation equipment expenses, etc.
- (3) Low-Income – Household income does not exceed the greater of 80% of the Area Median Family Income or 80% of the Statewide Income Limits, adjusted for Household size, in accordance with the current HOME Investment Partnerships Program income limits as defined by HUD.
- (4) Project Costs – Program funds (combined Hard and Soft Costs) that directly assist a Household.
- (5) Qualified Inspector – Certified by the Administrator that the individual has professional certifications, relevant education or a minimum of five (5) years experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing and electrical systems found in Single Family Housing Units, as evidenced by inspection logs, certifications, training courses or other documentation.
- (6) Reservation Agreement – A written Agreement including all amendments thereto between the Department and Administrator that authorizes the Administrator to reserve funds under the AYBRP.
- (7) Soft Costs – Costs related to and identified with a specific Single Family Housing Unit other than construction costs, per Texas Administrative Code, Title 10, Part 1, Single Family Umbrella Rule §20.3.

§26.22 Amy Young Barrier Removal Program Geographic Dispersion

- (a) The process to promote geographic dispersion of program funds is as follows:
- (1) For the first 90 days of the initial release of funds, each state region will receive funding amounts for their rural and urban subregions. For 90 days, these funds may be reserved only for Households located in these rural and urban subregions.
 - (2) For the next 90 days following the initial 90 days after the release date, any funds remaining in the rural and urban subregions will be combined into one balance for that state region. For 90 days, these funds may be reserved only for Households located in that state region.
 - (3) After the initial 180 days following the release date, any funds remaining across all state regions will collapse into one state-wide pool. For as long as funds are available, these funds may be reserved for any Households anywhere in the state on a first-come, first-served basis.
- (b) If any additional funds beyond the original program allocations that derive from HTF loan repayments, interest earnings, deobligations, and other HTF funds in excess of those funds required under Rider 8 may be placed directly into the state-wide pool for reservation.

§26.23 Amy Young Barrier Removal Program Administrative Requirements

(a) To participate in the Program, an eligible participant must first be approved as an Administrator by the Department by the submission of a Reservation System Access Application.

Eligible participants include Colonia Self-Help Centers established under Texas Government Code, Chapter 2306, Subchapter Z; Councils of Government; Units of Local Government; Nonprofit Organizations; Local Mental Health Authorities and Public Housing Authorities.

(b) The Administrator must enter into a Reservation Agreement (“Agreement”) with the Department in order to be eligible to reserve funds for the Amy Young Barrier Removal Program.

(1) The Applicant submit a current letter of determination from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on throughout the agreement period to access the Reservation System.

(2) The Applicant must be registered and in good standing with the Office of the Secretary of State and the State Comptroller's Office to do business in the state of Texas.

(3) The Applicant must have the capacity and experience demonstrating at least two years experience in housing rehabilitation in Texas. Summary of experience will describe the capacity of key staff members and their skills and experience in client intake, records management, and managing housing rehabilitation. It will also describe organizational knowledge and experience in serving Persons with Disabilities.

(4) The Applicant must evidence of financial accountability standards, demonstrated by certification from a Certified Public Accountant and an audited financial statement from the most recent fiscal year, or a current dated and signed financial statement for the period since last audit produced. For Nonprofit Organizations that do not yet have audited financial statements, the Department may accept a resolution from the Board of Directors that is signed and dated within the six months preceding the application and that certifies that the accounting procedures used by the organization conform to Generally Accepted Accounting Principles (GAAP) and the Financial Accounting Standards Board (FASB) No. 117, “Financial Statements of Not-For-Profit Organizations”.

(5) Applicants who have previously received any TDHCA funding must be in compliance with all active Contracts and Agreements.

(6) An Applicant must submit a current roster of all Board of Directors, including names and mailing addresses.

(7) The Applicant must submit a resolution from the Board of Directors, Council, or Commissioners that is signed and dated within the six months preceding the application. The resolution must state that the board, council or commissioners have approved the Applicant to access the Reservation System for TDHCA’s Amy Young Barrier Removal Program; and the name and title of the individual authorized to execute a written Reservation System Access Agreement.

(8) The Applicant must submit any past due Single Audit to the Department in a satisfactory format on or before the Application deadline.

(9) The Applicant's compliance history will be evaluated in accordance with 10 TAC Chapter 1, Subchapter 1, §1.302, relating to Previous Participation Reviews for Department Program Awards. Access to funds may be subject to terms and conditions.

(10) If applicable, the Applicant must submit copies of executed contracts with consultants or other organizations that are assisting in the implementation of the applicant’s AYBRP activities. They must include a summary of the consultant or other organization’s experience in housing rehabilitation and/or serving Persons with Disabilities.

(c) Administrators must follow the processes and procedures as required by the Department through its governing statute (Chapter 2306 of the Government Code), Administrative Rules (Texas Administrative Code, Title 10, Part 1), Reservation Agreement, Program Manual, forms, and NOFA.

§26.24 Amy Young Barrier Removal Program Reservation System Requirements

(a) An Administrator is ineligible to access the online Reservation System until any past due audits or Department audit certification forms have been submitted to the Department in a satisfactory format.

(b) Reservation Setups will be processed in the order submitted on the Reservation System. Submission of a Reservation Setup consisting of support documentation on behalf of a Household does not guarantee funding.

(c) If the Reservation is incomplete and missing any of the required forms as prescribed by the current setup instructions, it will be set back to "pending" status and funds will be released and available for reservation.

(d) If support documentation needs correction or additional information, the Department will notify the Administrator of the deficiencies. If any deficiencies remain uncured within ten calendar days after notification, the Department may cancel the reservation.

(e) If a Household is eligible for assistance, the Department will reserve up to the maximum of \$20,000 in Project Costs and an Administration Fee equal to 10% of the combined Hard and Soft costs in the Housing Contract System on behalf of the Household.

§26.25 Amy Young Barrier Removal Program Household Eligibility Requirements

(a) At least one Household member shall meet the definition of Persons with Disabilities.

(b) The assisted Household shall not have Household income that exceeds 80% of Area Median Family Income.

(c) The assisted Household's liquid assets shall not exceed \$20,000. Liquid assets are considered to be cash deposited in checking or savings accounts, money markets, certificates of deposit, mutual funds or brokerage accounts; the net value of stocks or bonds that may be easily converted to cash; and the appraisal district's market value for any real property that is not a principal residence. Funds in tax-deferred accounts for retirement or education savings (e.g., Individual Retirement Accounts, 401Ks, 529 plans) are excluded from the liquid assets calculation.

(d) The Household may be ineligible for the program if there is debt owed to the State of Texas, including a tax delinquency; a child support delinquency; a student loan default; or any other delinquent debt owed to the State of Texas.

§26.26 Amy Young Barrier Removal Program Property Eligibility Requirements

(a) Owner-occupied homes are eligible for Program assistance.

(1) In owner-occupied homes, the owner of record must reside in the home as their permanent residence unless otherwise approved by the Department.

(2) Real property taxes assessed on an owner-occupied Single Family Housing Unit must be current (including prior years). Alternatively, the Household must be satisfactorily participating in an approved payment plan with the taxing authority and must be current for at least six consecutive months prior to the date of Application, or, must have qualified for an approved tax deferral plan, or has received a valid exemption from real property taxes.

(b) Certain rental units are eligible for Program assistance.

(1) In rental units, all Household occupants, including the Person with Disability, must be named on the lease.

(2) If the owner of record does not live in the subject property with the Person with Disability, the Department may consider it a renter-occupied unit.

(3) If the property is family-owned but the owner of record is not a Household member (or is deceased), the Department may consider it a renter-occupied unit.

(4) The following rental properties are ineligible for Program assistance:

(A) Property that is or has been developed, owned, or managed by that Administrator or an Affiliate;

(B) Rental units in properties that are financed with any federal funds or that are subject to 10 TAC Chapter 1, Subchapter B, §1.206 relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973.

(C) Rental units that have life-threatening hazards or unsafe conditions identified in the initial inspection. Program funds may not be used to correct hazardous or unsafe conditions in rental units, but may be used for accessibility modifications only after the life-threatening hazards and unsafe conditions have been corrected by the property owner at the property owner's expense.

(D) Rental units owned by a property owner who is delinquent on property taxes associated with the property occupied by the Household.

§26.27 Amy Young Barrier Removal Program Construction Requirements

(a) Inspections.

(1) Initial inspection is required and must identify the accessibility modifications needed by the Person with Disability; assess and document the condition of the property; and identify all deficiencies that constitute life-threatening hazards and unsafe conditions.

(2) Final inspection is required and must verify, assess and document that all construction activities have been repaired, replaced and/or installed in a professional manner consistent with all applicable building codes and Program requirements.

(3) Initial and final inspections must be completed by a Qualified Inspector.

(4) All On-Site Sewage Facilities (OSSF or septic system) shall be inspected by a Texas Commission on Environmental Quality authorized agent to determine if the system is in substantial compliance with Health & Safety Code, Chapter 366, and the rules adopted under that chapter, unless waived by the Department on a case-by-case basis.

(b) A Manufactured Housing Unit may be eligible for Program assistance if it was constructed on or after January 1, 1995.

(c) Construction standards.

(1) Administrators must follow all applicable sections of their local building codes and ordinances, pursuant to Section 214.212 of the Local Government Code. Where local codes do not exist, the 2015 International Residential Code (IRC), including Appendix J for Existing Buildings and Structures, is the applicable code for the Program.

(2) Accessibility modifications shall be made with consideration of the design standards established by the 2010 ADA Standards. Any variation from 2010 ADA Standards must be documented as necessary to meet the disability related needs of the Person with a Disability.

(3) Administrators must adhere to Chapter 21 of this Title, relating to "Minimum Energy Efficiency Requirements for Single Family Construction Activities".

(d) Life-threatening hazards and unsafe conditions.

(1) Administrators may make repairs to eliminate life-threatening hazards and correct unsafe conditions in the housing unit as long as no more than 25% of the Project Hard Costs budget is utilized for this purpose, unless otherwise approved by the Department.

(2) Life-threatening hazards and unsafe conditions include, but are not limited to: faulty or damaged electrical systems; faulty or damaged gas-fueled systems; faulty or damaged heating and cooling systems or the absence of adequate heating and cooling system; faulty or damaged plumbing systems, including sanitary sewer systems; faulty or damaged smoke, fire and carbon monoxide detection/alarm systems or the absence of these systems; structural systems on the verge of collapse or failure; environmental hazards such as mold, lead-based paint, asbestos or radon; serious pest infestation; absence of adequate emergency escape and rescue openings and fire egress; and the absence of ground fault circuit interrupters (GFCI) and arc fault circuit interrupters (AFCI) in applicable locations.

(3) Because of the essential nature of the elimination of certain life-threatening hazards, the percentage of Project Hard Costs budget devoted to eliminate life-threatening hazards and correct unsafe conditions in the housing unit may exceed 25% if the work write-up and cost estimation includes the correction of: inadequate, faulty, or damaged systems; the absence of emergency escape, rescue openings and fire egress, ground fault circuit interrupters (GFCI), arc fault circuit interrupters (AFCI); and the absence of smoke, fire and carbon monoxide detection/alarm systems. The combination of the correction of these certain life-threatening hazards with the correction of any other unsafe conditions cannot exceed 40% of Project Hard Costs budget.

(4) All areas and components of the housing must be free of life-threatening hazards and unsafe conditions at project completion.

(e) Work-Write Ups. The Department shall review work-write ups (also referred to as "scope of work") and cost estimates prior to the Administrator soliciting bids.

(f) Bids. The Department shall review all line item bids Administrators select for award prior to the commencement of construction. Lump sum bids will not be accepted.

(g) Change orders. Administrators seeking change orders must obtain written Department approval prior to the commencement of any work related to the proposed change. Failure to get prior Departmental approval may result in disallowed costs.

§26.28 Amy Young Barrier Removal Program Project Completion Requirements

(a) The Administrator has ninety calendar days to complete all construction activities and submit the Project and Administrative draw request, with required supporting documentation, in the Housing Contract System for reimbursement by the Department. The Department may grant a one-time, 30 -calendar-day extension to the Project completion deadline due to extenuating circumstances that were beyond the Administrator's control.

(b) The Department will reimburse the Administrator in one, single payment after the Administrator's successful submission of the Project and Administrative draw request per Department instructions. Interim draws will not be permitted. The Department reserves the right to delay draw approval in the event that the Household expresses dissatisfaction with the work completed in order to resolve any outstanding conflicts between the Household and/or the Administrators and their subcontractors.