

**Attachment A: Preamble, including required analysis, adopting the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect,

1. The repeal does not create or eliminate a government program, but relates to making changes to an existing activity;
2. The repeal does not require a change in the number of employees of the Department;
3. The repeal does not require additional future legislative appropriations;
4. The repeal does not result in an increase or a decrease in fees paid to the Department;
5. The repeal will repeal an existing regulation;
6. The repeal will not increase or decrease the number of individuals subject to the rule's applicability; and
7. The repeal will not negatively or positively affect the state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed chapter.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between March 29, 2024, and May 2, 2024. No comment was received.

The Board adopted the final order adopting the repeal on June 13, 2024.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed chapter affects no other code, article, or statute.

## **10 TAC Chapter 26, Texas Housing Trust Fund Rule**

### **SUBCHAPTER B          AMY YOUNG BARRIER REMOVAL PROGRAM**

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**Attachment B: Preamble, including required analysis, adopting the new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program**

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes, new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program. The purpose of the proposed new chapter is to implement a more germane rule and better align administration to state requirements.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to making changes to an existing activity;
2. The new rule does not require a change in the number of employees of the Department;
3. The new rule does not require additional future legislative appropriations;
4. The new rule does not result in an increase or a decrease in fees paid to the Department;
5. The new rule does not create a new regulation;
6. The new rule will not repeal an existing regulation;
7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The new rule will not negatively or positively affect the state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this rule and determined that the new rule will not create an economic effect on small or micro-businesses or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect there would be no economic

effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

**PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the rule will be a more germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the new rule.

**FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson has also determined that for each year of the first five years the new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

**SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE.** The Department accepted public comment between March 29, 2024, and May 2, 2024. The Department received comment from Phyllis McIntyre, a resident of Guadalupe County.

**COMMENT SUMMARY:** Commenter expressed concern about challenges to navigating the Department's website. Specifically noted was the Help for Texans website. Commenter suggested that residents have the ability to apply for funds directly to the Department as opposed to working through an Administrator.

**STAFF RESPONSE:** Staff appreciates the comment and recognizes the challenges associated with navigating the Department website. However, staff feels these challenges have been mitigated with the recent launch of a more streamlined, user-friendly Department website.

Staff acknowledges that the network of Administrators for the Amy Young Barrier Removal Program funds does not cover all areas of the state, and actively reaches out to units of local government when a constituent residing in an area that is not represented contacts TDHCA; however, the Department is not able to effectively administer program funds directly, and our planning documents require that funds are distributed through local Administrators that are able to provide oversight of the local program activities.

No changes are recommended in response to this comment.

The Board adopted the final order adopting the repeal on June 13, 2024.

**STATUTORY AUTHORITY.** The new subchapter is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new chapter affects no other code, article, or statute.

## **SUBCHAPTER B AMY YOUNG BARRIER REMOVAL PROGRAM**

### **RULE §26.20 Amy Young Barrier Removal Program Purpose**

The Amy Young Barrier Removal Program (the Program or AYBRP) provides one-time grants in combined Hard and Soft Costs to Persons with Disabilities in a Household qualified as Low-Income. Grant limits per household will be identified in the Notice of Funding Availability (NOFA). Grants are for home modifications that increase accessibility and eliminate substandard 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 Tex. Gov't 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 Texas Housing Trust Fund Rule).

(1) Administrative 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) Household Assistance Contract--A written agreement between the Department and Administrator that memorializes the term of the commitment of funds for a specific activity.

(4) Low-Income--Household income calculated in accordance with the Program Manual that does not exceed the greater of 80% of the Area Median Family Income or 80% of the State Median Family Income, adjusted for Household size, in accordance with the current HOME Investment Partnerships Program income limits, as defined by HUD.

(5) Project Costs--Program funds (combined Hard and Soft Costs) that directly assist a Household.

(6) Reservation System Participant (RSP)--Administrator who has executed a written Agreement with the Department that allows for participation in the Reservation System.

(7) Soft Costs--Costs related to and identified with a specific Single Family Housing Unit other than construction costs.

### **§26.22 Amy Young Barrier Removal Program Geographic Dispersion**

(a) The process to promote geographic dispersion of program funds is as described in this subsection:

(1) For a published period not less than 30 days and in accordance with the NOFA, each state region will be allocated funding amounts for its rural and urban subregions. During this initial period, these funds may be reserved only for Households located in these rural and urban subregions;

(2) After the initial release of funds under paragraph (1) of this subsection, each state region will combine any remaining funds from its rural and urban subregions into one regional balance for a second published

period not to exceed 90 calendar days. During this second period, these funds may be reserved only for Households located in that state region; and

(3) After no more than 180 calendar days following the initial release date, any funds remaining across all state regions will collapse into one statewide 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 Texas HTF loan repayments, interest earnings, deobligations, and/or other Texas HTF funds in excess of those funds required under Rider 8 or the Department's appropriation made under the General Appropriations Act may be reprogrammed at the discretion of the Department.

### **§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 through the submission of a Reservation System Access Application. Eligible participants include, but are not limited to: Colonia Self-Help Centers established under Tex. Gov't Code, Chapter 2306, Subchapter Z; Councils of Government; Units of Local Government; Nonprofit Organizations; Local Mental Health Authorities; and Public Housing Authorities. An eligible participant may be further limited by NOFA.

(b) The Department will produce an Application to satisfy the requirements for an eligible participant to apply to become an AYBR Administrator. The application will be available on the Department's website. Applications to access the Reservation System will include, at a minimum, criteria listed in paragraphs (1)-(7) of this subsection.

(1) A Nonprofit Organization must 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 throughout the term of the RSP Agreement to access the Reservation System.

(2) A private Nonprofit Organization 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 demonstrate at least two years of capacity and experience in housing rehabilitation in Texas. The Applicant will be required to provide a summary of experience that must describe the capacity of key staff members and their skills and experience in client intake, records management, and managing housing rehabilitation. It must also describe organizational knowledge and experience in serving Persons with Disabilities.

(4) The Applicant must provide evidence of adherence to applicable financial accountability standards, demonstrated by an audited financial statement by a Certified Public Accountant for the most recent fiscal year. For a Nonprofit Organizations that does 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 procedures used by the organization conform to the requirements in 10 TAC §1.402 (relating to Cost Principles and Administrative Requirements), and that the organization has adopted generally accepted accounting procedures that conform to Governmental Accounting Standards Board (GASB) or the Financial Accounting Standards Board (FASB), as applicable.

(5) The Applicant must submit a resolution from the Applicant's direct governing body that authorizes the submission of the Application and is signed and dated within the six months preceding the date of application submission. The resolution must include the name and title of the individual authorized to execute an RSP Agreement.

6) The Applicant's history will be evaluated in accordance with 10 TAC Chapter 1, Subchapter A, §1.302 and §1.303, (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and Executive Director Review, respectively). Access to funds may be subject to terms and conditions.

(7) 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 AYBR Program activities. The Applicant must provide 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) Terms of Agreement. The term of an RSP Agreement will not exceed the lesser of 36 months, or the term limitation defined in the NOFA. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this chapter in effect as of the date of submission by the Administrator.

(b) Limit on Number of Reservations. The limitation on the number of Reservations will be established in the NOFA.

(c) Administrator must remain in good standing with the Department and the state of Texas. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

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

(e) Reservations may be submitted in stages, and shall be processed through each stage as outlined in the Program Manual. All stages must be completed on or before the expiration of the Household Assistance Contract.

(f) Administrator must submit a substantially complete request for each stage of the Reservation as outlined in the Program Manual. Administrators must upload all required information and verification documentation in the Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of 14 calendar days beginning at the start of the first day following the date the Administrator is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests shall not constitute a Reservation of Funds.

(g) If a Household is determined to be eligible for assistance from the Department, the Department will issue a Household Assistance Contract reflecting the maximum award amount permitted under the NOFA in Project Costs and an Administrative Fee equal to 10% of the combined Hard and Soft costs in the Contract System on behalf of the Household, funding permitting. The term of the Household Assistance Contract may not exceed 12 months unless amended in accordance with this Subchapter.

(h) Amendments to Household Assistance Contracts may be considered by the Department provided the approval does not conflict with the state regulations governing use of these funds, or impact obligation or expenditure deadlines.

(1) The Executive Director's authorized designee may approve an amendment that

(A) extends the term of a Household Assistance by not more than three months,

(B) extends the draw period by not more than three months after the expiration of the Household Assistance Contract; or

(C) increases Project funds within the limitations set forth in this Chapter.

(i) The Executive Director may approve amendments to a Household commitment contract, except amendments to extend the contract term of a Household Assistance contract by more than 12 months.

#### **§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 must be qualified as Low-Income.

(c) The assisted Household's liquid assets shall not exceed \$25,000. 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 net cash value calculated utilizing 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, including but not limited to Individual Retirement Accounts, 401(k)s, 529 plans, and whole life insurance policies 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. In owner-occupied homes, the owner of record must reside in the home as their permanent residence unless otherwise approved by the Department. If the property is family-owned and the owner of record is deceased or not a Household member, the Department may deem the property renter-occupied unless satisfactory documentation is provided to the Department that confirms otherwise.

(b) Certain rental units are eligible for Program assistance and must meet the following requirements:



(1) In rental units, all Household occupants, including the Person with Disability, must be named on the Program intake application and household income certification.

(2) The owner of record for the property shall provide a statement allowing accessibility modifications to be made to the property.

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

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

(2) 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);

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

(4) 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 arranged by the Administrator 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 arranged by the Administrator 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, and as required in the Work Write-Up as described in subsection (e) of this section.

(b) A Manufactured Housing Unit may be eligible for Program assistance if it was constructed on or after January 1, 1995. The Department may allow Manufactured Housing Units older than January 1, 1995, to receive only exterior accessibility modifications (i.e., ramps, handrails, concrete flatwork) as long as the Administrator can verify that the unit itself will be free of hazardous and unsafe conditions.

(c) Construction standards.

(1) Administrator must follow all applicable sections of 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 to 2010 American Disability Act (ADA) Standards, but may vary from the ADA Standards in order to meet specific accessibility needs of the household as requested and agreed to by the assisted household.

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

(4) Administrators and subcontractors must honor a twelve-month warranty on all completed items in their scope of work.

(d) Life-threatening hazards and unsafe conditions.

(1) Administrators may make repairs to eliminate life-threatening hazards and correct unsafe conditions in the Single-Family Housing 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, damaged or absent heating and cooling systems; faulty or damaged plumbing systems, including sanitary sewer systems; faulty, damaged or absent smoke, fire and carbon monoxide detection/alarm 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) If the work write-up addresses any of the following line items, the percentage of Project Hard Costs devoted to eliminating substandard, unsafe conditions may only exceed 25% by the amount of the following line item's cost: emergency escape, rescue openings and fire egress; ground fault circuit interrupters (GFCI); arc fault circuit interrupters (AFCI); and smoke, fire, and carbon monoxide detection/alarm systems. The combination of these line items plus the correction of any other unsafe conditions cannot exceed 40% of Project Hard Costs budget.

(4) All areas and components of the Single-Family Housing Unit 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 Administrator selects for award prior to the commencement of construction. Lump sum bids will not be accepted.

(g) Change orders. An Administrator seeking a change order 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 must complete all construction activities prior to the expiration of the Household Assistance Contract and the Administrator must submit the Project and Administrative Draw Request, with required supporting documentation, in the Housing Contract System for reimbursement by the Department not more than 60 calendar days after expiration of the Household Assistance Contract.

(b) The Administrator must submit evidence with the final Draw that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and

of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents.

(c) The Administrator must provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price.

(d) 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 may 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 the Administrator and its subcontractors.