

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
TDHCA Governing Board Approved Draft of Proposed Amendments to  
10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements for the HOME Program

Disclaimer

Attached is a draft of proposed amendments to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements, relating to the HOME Program that was approved by the TDHCA Governing Board on December 12, 2019. This action will entail amendments to the current rule at this section. This document, including its preamble, was published in the December 27, 2019, edition of the Texas Register and that published version constitutes the official version for purposes of public comment and can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

Public Comment

Public Comment Period: Start: 8:00 a.m. Austin local time on December 20, 2019  
End: 5:00 p.m. Austin local time on January 20, 2020

Comments received after 5:00 p.m. Austin local time on January 20, 2020, will not be accepted.

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

Texas Department of Housing and Community Affairs  
Attn: Brooke Boston  
Rules Comments  
P.O. Box 13941  
Austin, Texas 78711-3941  
Email: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us)

Written comments may be submitted 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  
Street Address: 221 East 11th Street, Austin, TX 78701  
Mailing Address: PO Box 13941, Austin, TX 78711-3941  
Main Number: 512-475-3800 Toll Free: 1-800-525-0657  
Email: [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us) Web: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Preamble, including required analysis, for a proposed amendment to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements. The purpose of this amendment is to correct a citation referenced in the rule.

Tex. Gov't Code §2001.0045(b) does apply to the amendment being proposed and no exceptions are applicable. However, the rule already exists and the correction is only administrative in nature. There are no costs associated with this rule action, therefore no costs or impacts warrant a need to be offset.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed amendment would be in effect, the proposed amendment does not create or eliminate a government program, but relates to correcting a citation in the rule.

2. The proposed amendment does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.

3. The proposed amendment does not require additional future legislative appropriations.

4. The proposed amendment does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed amendment is not creating a new regulation.

6. The proposed amendment will not repeal an existing regulation.

7. The proposed amendment will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed amendment will not negatively nor positively affect this state's economy.

b. 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 proposed amendment and determined that the proposed amendment will not create an economic effect on small or micro-businesses or rural communities.

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed amendment as to its possible effects on local economies and has determined that for the first five years the proposed amendment 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.

e. 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 proposed amendment is in effect, the public benefit anticipated as a result of the amended section would be clarity in requirements. There will not be economic costs to individuals required to comply with the amended section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 20, 2019, to January 20, 2020, to receive input on the proposed amended section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, January 20, 2020.

STATUTORY AUTHORITY. The proposed amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed amended sections affect 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 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 if the 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) 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. 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 costs are limited to 8 percent of Direct Activity Costs, excluding Match funds, and Administrator may not be reimbursed for Activity soft costs.

(h) 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.

(i) 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.

(j) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with §10.802640 of this 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 (l) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in §10.802640 of this Title)) will govern.

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

(l) 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.