

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of
10 TAC §5.801, Project Access Initiative

Disclaimer

Attached is a draft of proposed 10 TAC §5.801, Project Access Initiative, that was approved by the TDHCA Governing Board on November 8, 2018. This action will entail the repeal of the current rule at 10 TAC §5.801, Project Access Initiative, and a contemporaneous new rule being proposed to replace it. This document, including its preamble, is expected to be published in the November 23, 2018, edition of the Texas Register and that published version will constitute 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 November 23, 2018
End: 5:00 p.m. Austin local time on December 27, 2018

Comments received after 5:00 p.m. Austin local time on December 27, 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: Brooke Boston
Rules Comments
P.O. Box 13941
Austin, Texas 78711-3941
Email: brooke.boston@tdhca.state.tx.us

Written comments may be submitted in hard copy 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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Preamble, including required analysis, for proposed new 10 TAC §5.801, Project Access Initiative

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC §5.801, Project Access Initiative. The purpose of the proposed new section is to make changes that bring the rule up to date, streamline language, provide for one definition of disability for consistency and equity in handling client eligibility, and to specify the unique federal criteria required of two funding sources within the program - Mainstream Voucher Program vouchers and Non-Elderly Disable Vouchers.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted because no exceptions apply, however it should be noted that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this 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.

Timothy K. Irvine, Executive Director, has determined that, for the first five years the proposed new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rule that governs the Project Access program.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The proposed new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and
8. The new rule will not negatively nor positively affect the 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.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. This rule relates to the procedures in place for the Project Access Program which provides Section 8 Housing Choice Vouchers for persons with disabilities exiting institutions so that they can live in community-based settings. The Program assists individuals directly, therefore no small or micro-businesses are subject to the rule.
3. The Department has determined that because this rule relates only to a revision to a program rule that applies only to the recipients of the voucher, and the rule changes primarily make minor edits and add consideration for how the Mainstream Voucher Program will incorporate into the Project

Access program, there will be no economic effect on small or micro-businesses or rural communities.

c. 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.

d. 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 the new rule has no economic effect on local employment because this rule relates only to individuals who may receive a voucher; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." The Project Access program is a statewide program so there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Irvine has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the proposed new rule will be a more clear rule for recipients and assurance of the program having compliant regulations that reflect how the Mainstream Voucher Program is addressed within the Project Access program. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

REQUEST FOR PUBLIC COMMENT. The Department will accept public comment from November 23, 2018, through December 27, 2018. 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 by email to brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, December 27, 2018.

STATUTORY AUTHORITY. The rule review is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

Proposed 10 TAC §5.801, Project Access Initiative – Clean Version Reflecting Proposed Changes Incorporated

(a) Purpose. The Project Access Program ("PA Program") is a program that utilizes federal Section 8 Housing Choice Vouchers, Non Elderly Disabled Vouchers, and Mainstream Vouchers administered by the Texas Department of Housing and Community Affairs (the "Department") to assist low-income persons with disabilities in transitioning from institutions into the community by providing access to affordable housing. This rule provides the parameters and eligibility standards for this program.

(b) Definitions.

(1) At-Risk Applicant--A household that applies to the Department's Section 8 program that was a prior resident of an Institution.

(2) HUD--The U.S. Department of Housing and Urban Development.

(3) Institution--congregate settings populated exclusively or primarily with individuals with disabilities; congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals' ability to engage freely in community activities and to manage their own activities of daily living; or settings that provide for daytime activities primarily with other individuals with disabilities. This definition includes but is not limited to a nursing facility, state psychiatric hospital, intermediate care facility, or board and care facility as defined by HUD. The definition for Institution is further limited for vouchers funded with NED as further provided for in section (e)(2)(C) of this section. This definition does not include a prison, jail, halfway house, or other setting that persons reside in as part of a criminal proceeding.

(4) Mainstream Vouchers ("MVP") --HUD's Mainstream Voucher Program.

(5) Non Elderly Disabled ("NED")--HUD's Non Elderly Disabled Program.

(6) Section 8--HUD's Section 8 Housing Choice Voucher Program administered by the Department.

(c) Regulations Governing Program. All Section 8 Program rules and regulations, including but not limited to criterion at 24 CFR Part 982, apply to the program.

(d) Project Access in the Department's PHA Plan. Project Access households have a preference in the Department's Section 8 Program, as designated in the Department's Annual PHA Plan. The total number of Project Access Vouchers will be determined each year in the Department's PHA Plan.

(e) Eligibility for the Project Access Program.

(1) A household that participates in the Project Access Program must meet all Section 8 eligibility criteria, and one member of the household must meet all of the eligibility criteria in subparagraphs (A) and (B) of this paragraph.

(A) Must have a disability as defined in 24 CFR §5.403; and

(B) Must meet one of the criteria in clauses (i) or (ii) of this subparagraph:

(i) An At-Risk Applicant that meets the criteria of subclause (I) or (II) of this clause:

(I) A current recipient of Tenant-Based Rental Assistance ("TBRA") from a HOME Investment Partnership Program and within six (6) months prior to expiration of that TBRA assistance; or

(II) A household with a household member who meets the criteria of an At-Risk Applicant and has lost their Tenant Based Rental Assistance from a HOME Investment Partnership Program due to lack of available funding.

(ii) be a resident of an Institution at at the time of voucher issuance.

(2) NED and Mainstream Vouchers have these additional eligibility criteria which are:

(A) The household member with the disability as defined in 24 CFR §5.403, must be 18 but under 62 years of age at the time of voucher issuance;

(B) For NED only, the head of household, spouse, co-head, or sole member, must be a person with a disability; and

(C) For NED only, the qualifying household member must not be an At-Risk Applicant as described in this subsection, must be residing in a nursing facility, Texas state psychiatric hospital, or intermediate care facility immediately prior to voucher issuance, and must also be referred by the applicable HHSC funded agency.

(f) Waiting List and Allocation of Vouchers.

(1) Unless no longer authorized as a set-aside by HUD, no more than 10 percent of the vouchers used in the Project Access Program will be reserved for households with a household member eligible for a pilot program in partnership with the Health and Humans Services Commission ("HHSC") for Texas state psychiatric hospitals who otherwise meets the criteria of the Project Access Program at the time of voucher issuance.

(2) The Department's Waiting List for PA vouchers will be kept "open" and the Department will accept an application for the PA Program at any time. An applicant for the PA Program is placed on a Waiting List until a voucher becomes available. An applicant who qualifies for the Project Access HHSC Pilot Program in subsection (f)(1) of this section is placed on a Waiting List for Project Access HHSC Pilot Program, and also for the general PA Program Waiting List.

(3) The Department will select applicants off the Waiting List for the Project Access HHSC Pilot Program, and for the general PA Program waitlist to ensure that the Department is utilizing all NED and Mainstream Vouchers before issuing other Section 8 Vouchers.

(4) Maintaining Status on the Project Access Waiting List. A household on the Project Access waiting list may maintain their order and eligibility for a Project Access voucher if the household:

(A) applied for the PA Program and was placed on the waiting list prior to transition out of the institution; and

(B) received continuous Tenant Based Rental Assistance from a HOME Investment Partnership Program or other Department funding for rental assistance from the time of exit from the institution until the issuance of the Project Access voucher.