

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
**TDHCA Governing Board Approved Draft of
10 TAC §5.802, Section 8 Housing Choice Voucher Program, Waiting List**

Disclaimer

Attached is a draft of proposed 10 TAC §5.802, Waiting List, that was approved by the TDHCA Governing Board on May 13, 2021. This is a new rule. This rule applies only to the TDHCA Section 8 Housing Choice Voucher Program administered in the TDHCA 34-county jurisdiction; a list of those counties is provided below prior to the rule. This document, including its preamble, is expected to be published in the May 28, 2021, 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 May 28, 2021
End: 5:00 p.m. Austin local time on June 28, 2021

Comments received after 5:00 p.m. Austin local time on June 28, 2021, 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: Brooke Boston
Rules Comments
P.O. Box 13941
Austin, Texas 78711-3941
Email: brooke.boston@tdhca.state.tx.us

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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TDHCA's PHA Jurisdictional Voucher List

The Department's jurisdiction list of 34 counties is identified for whole counties, with the exception that the Department will not serve a part of a county that is within another PHA's Section 8 Program jurisdiction, noted in the list below when such cases are applicable.

Atascosa County (excluding the jurisdiction of Pleasanton Housing Authority's Section 8 Program)
Austin County
Bandera County
Bosque County
Caldwell County
Chambers County
Colorado County
Comal County (excluding the jurisdiction of New Braunfels Housing Authority's Section 8 Program)
Comanche County
Crockett County
Denton County (excluding the jurisdiction of the City of Denton Housing Authority's Section 8 Program)
Ellis County
Erath County
Falls County
Fort Bend County (excluding the jurisdiction of Rosenberg Housing Authority's Section 8 Program)
Freestone County
Frio County (excluding the jurisdictions of Pearsall and Dilley Housing Authority's Section 8 Program)
Galveston County (excluding the jurisdiction of Texas City and City of Galveston Housing Authority's Section 8 Program)
Gillespie County
City of Navasota in Grimes County (excludes the jurisdiction outside of the City of Navasota which is served by the Brazos Valley Council of Government Housing Authority's Section 8 Program)
Guadalupe County (excluding the jurisdictions of Seguin and Schertz Housing Authority's Section 8 Program)
Johnson County (excluding the jurisdiction of City of Cleburne Housing Authority's Section 8 Program)
Karnes County (excluding the jurisdiction of Kennedy Housing Authority's Section 8 Program)
Kendall County (excluding the jurisdiction of Boerne Housing Authority's Section 8 Program)
Kerr County
Lee County
Llano County
McLennan County (excluding the jurisdiction of Waco Housing Authority's Section 8 Program)
McMullen County
Medina County (excluding the jurisdiction of Devine Housing Authority's Section 8 Program)
Waller County
Wharton County
Wilson County (excluding the jurisdiction of Floresville Housing Authority's Section 8 Program)
Wise County

Preamble for proposing new 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.802, Waiting List

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.802, Waiting List. The purpose of the rule is to provide how the Department, in its role as a public housing authority, will handle the waiting list in its 34-county jurisdiction including how the opening of the waiting list will be announced, affirmative outreach and marketing, how the waiting list process will be operationalized, language access considerations, reasonable accommodations, how households will be issued vouchers from the list, and notifications to households.

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

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions are applicable. While there are outreach and advertising costs associated with the opening of a PHA waiting list, these outreach and marketing steps are required by the U.S. Department of Housing and Urban Development (HUD) and are therefore necessary to ensure federal compliance. All costs are paid for by the federal administrative funds associated with the vouchers.

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 rule will be in effect, the rule does not create or eliminate a government program, but relates to the process used to accept applications for an existing program, the Section 8 Housing Choice Voucher (HCV) program.
2. The proposed rule does not require a change in work that will require the creation of new employee positions, nor will the rule reduce work load to a degree that any existing employee positions are eliminated.
3. The proposed rule does not require additional future legislative appropriations.
4. The proposed rule 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 rule is creating a new regulation, however it is not placing regulatory requirements on any other parties, but merely providing for the transparent process used in the existing HCV program.
6. The action will not repeal any rule.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability as the rule merely provides the methods by which an applicant can apply for a HCV voucher.
8. The proposed rule will not negatively or 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 rule and determined that the rule 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 rule does not contemplate or 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 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 will 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 rule is in effect, the public benefit anticipated as a result of the rule would be the provision of a clear policy for the administration of the Department's waiting list. There will not be economic costs to individuals required to comply with the rule.

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 action is in effect, enforcing or administering the rule has minimal implications related to costs or revenues of the state or local governments. There are outreach and advertising costs associated with the opening of a PHA waiting list which are required by HUD and necessary to ensure federal compliance. All costs are paid for by the federal administrative funds associated with the vouchers.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 28, 2021, to June 28, 2021, to receive input on the proposed rule. 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. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time June 28, 2021.

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

§5.802, Waiting List

(a) Purpose.

The U.S. Department of Housing and Urban Development (HUD) requires that the Texas Department of Housing and Community Affairs (the Department), in its role as a public housing authority (PHA) administering a Housing Choice Voucher (HCV) program, adopt a clear approach to accepting applications, placing households on the waiting list, and selecting households from the waiting list. This rule provides the Department's policies for taking applications, managing the waiting list and selecting households for HCV assistance specifically for its 34-county jurisdictional area.

(b) Applicability.

(1) This rule is applicable only to the specific geographically limited jurisdiction of the Department. This jurisdictional area is comprised of discrete areas within counties (currently 34), but may be expanded or reduced upon action of the Board. The jurisdictional area reflected on the Department's website will serve as the jurisdictional area for the purpose of this rule.

(2) This rule does not apply to the waiting list for statewide Project Access vouchers which is addressed in §5.801 of this chapter. The rule does not address the specific waiting list process for project-based vouchers administered by the Department or for VASH vouchers administered by the Department. Should any special purpose vouchers be received by the Department that serve specific populations or geographic areas other than the geographically limited jurisdiction of the Department referenced in paragraph (1) of this subsection, these waiting lists policies are not required to be utilized. Additionally, certain households might be accepted into the HCV program if required by 24 CFR §982.203, or at the direction of HUD, as directed by a court of law, or as part of a TDHCA conciliation agreement.

(c) Definitions and HUD Regulations.

(1) While the HUD regulations in 24 CFR Parts 5, §§ 903 and 982 use the word "family," in order to be consistent with other rules in this Part, this rule will use the word "household." Both words are intended to have the same meaning.

(2) Nothing in this rule is intended to conflict with federal statutes or regulations that govern the HCV assistance. If HUD mandates a process or procedure to be used for application or waiting list management that is not identified in this rule, the Department will follow HUD's direction and will amend this rule as soon as practicable.

(d) Outreach and Affirmative Marketing.

(1) HUD regulations require that all households have an equal opportunity to apply for and receive housing assistance, and that the PHA affirmatively further fair housing goals in the administration of the program [24 CFR §982.53].

(2) The Department will conduct sufficient outreach to ensure that a sufficient number of applications will be received. HUD requires that at least 75% of the households served by the Department are extremely low-income households, and therefore the Department may need to conduct special outreach to ensure that an adequate number of extremely low-income households apply for assistance. All outreach will specify the number of households that will be accepted onto the waiting list.

(3) All outreach efforts relating to the opening of the waiting list will take place at least 7 calendar days prior to the first day of the application acceptance period, but no longer than 45 calendar days prior to the first day of the application acceptance period.

(4) Prior to performing outreach efforts for the opening of the waiting list, the Department will analyze the characteristics of the population being served by the program and the characteristics of the population as a whole in the PHA's jurisdiction to identify underserved populations. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are underrepresented in the program. Outreach materials will be provided in English, Spanish, and any other language as determined by a 4-factor analysis within each county service area.

(5) Outreach efforts will include:

(A) marketing through press releases to local newspapers, including minority newspapers;

(B) communicating with councils of governments, regional planning councils, and community action agencies, whose jurisdictions include any one of the counties in the jurisdiction of the Department, to:

(i) request that they distribute informational materials and flyers to their clients;

(ii) offer training so that they can assist households with submitting an online application;
and

(iii) request that they make available a computer or web interface for clients to apply.

(C) developing partnerships with other organizations that serve the low-income population and agencies that provide services to elderly persons, people with disabilities, and people with Limited English proficiency (LEP); and

(D) clear guidance on how a person with a disability can request a reasonable accommodation for the application process.

(6) The Department will maintain a designated telephone number where interested persons can receive specific directions on how and when to apply.

(e) Application.

(1) The Department will utilize an electronic application process available in multiple languages.

(2) Any household that wishes to receive HCV assistance must apply for admission to the program.

(3) All applications must be received through the Department's online application tool. Applications received in the mail or by hand delivery will not be considered.

(4) To be placed on the waiting list only an initial pre-application is required to be submitted. However, the Department may elect to skip the pre-application and use only the full application. Only when an applicant is being pulled from the waiting list to be offered a voucher will a full application submission be required. Form HUD-92006, Supplement to Application for Federally Assisted Housing, must be submitted as an attachment to the Department's full application. A household must submit the completed pre-application or application to ensure that the Department receives the information needed to determine the household's eligibility.

(5) Application Acceptance Period. Applications will be accepted for a 14 calendar day period.

(6) Individuals who have a disability which would prevent them from making an application online may call the Department to make special arrangements so that Department staff can complete their application in time to be included in the lottery process. A Telecommunications Device for the Deaf (TDD) is available for the deaf.

(f) Placement on Waiting List.

- (1) No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list [24 CFR §982.202(c)].
- (2) Placement on the waiting list does not indicate that the household is, in fact, eligible for assistance. A final determination of eligibility will be made when the household is selected from the waiting list.
- (3) Creation of Waiting List. The Department will establish a single waiting list for its jurisdictional area. The Department will announce in its outreach documents the total number of households it will place on its waiting list. Except for households on a project-based waiting list, all households that are on a special purpose waiting list at the beginning of the application acceptance period and that wish to live in the Department's jurisdictional area will be placed first on the jurisdictional waiting list based on the time they have been on the special purpose waiting list (i.e. oldest time on any special purpose waiting list gets assigned the first number). All other applications received during the application acceptance period will be assigned a number using a random number generator, called a lottery process. These applications will then be placed in numerical order according to that assigned number. The Department will then place applicants on the waiting list up to the number of households the Department announced it would accept on its waiting list in rising numerical order (inclusive of the households automatically placed on the jurisdictional waiting list because they were on a special purpose waiting list at the beginning of the application acceptance period). All other applications not within the number being accepted on the wait list will not be placed on the waiting list. All applications submitted will be notified in writing of having been added to the waiting list and their number ranking, or that they were not placed on the waiting list.
- (4) Ineligible for Placement on the Waiting List. If the Department can determine from the information provided that a household is ineligible, the household will not be placed on the waiting list or be able to participate in the lottery process described in this section for placement on the waiting list. Where a household is determined to be ineligible, the Department will send written notification of the ineligibility determination within 14 calendar days of receiving the complete application from the Department at the Department headquarters [24 CFR §982.201(f)]. The notice will specify the reasons for ineligibility, and will inform the household of its right to request an informal review and explain the process for doing so.
- (5) Applicants with Special Purpose Characteristics. The application for the jurisdictional waiting list will ask if the household qualifies for any of the open special purpose waiting lists that the Department maintains, except for a project-based waiting list or a waiting list in which a household may not directly apply. The applicant household, if qualified, may be added to one or more special purpose waiting lists at the end of the application acceptance period, but this will not impact their lottery number for the jurisdictional waiting list.
- (5) If the Department permanently absorbs vouchers from another housing authority and is reassigned the contract by HUD, the waiting list from the other housing authority will be maintained, in its existing order, but will not be further expanded. That waiting list will be treated as separate from the rest of the Department's waiting list until it has been depleted. If after absorption of that area, the Department opens its jurisdictional waiting list, applicants located in the absorbed area will be eligible to also apply to this waiting list.

(g) Selection of Households from the Waiting List

(1) The actual order in which households are selected from the waiting list can be affected if a household has certain characteristics designated by HUD or the Department to receive preferential treatment, such as being impacted by a particular declared disaster. Funding earmarked exclusively for households with particular characteristics may also alter the order in which households are served. HUD requires that extremely low-income (ELI) households make up at least 75% of the households admitted to the HCV program during the Department's fiscal year. ELI households are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, the Department may skip non-ELI household on the waiting list in order to select an ELI household. [24 CFR §982.201(b)(2)]. The skipped non-ELI household will retain its position on the waiting list. Low-income households admitted to the program that are "continuously assisted" under the 1937 Housing Act [24 CFR 982.4(b)], as well as low-income or moderate-income households admitted to the program that are displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, are not counted for income targeting purposes [24 CFR §982.201(b)(2)(v)].

(3) When a voucher becomes available, the Department will select the household at the top of the waiting list. The order of admission from the waiting list IS NOT based on household size, or on the household unit size for which the household qualifies under the occupancy guidelines. If the Department does not have sufficient funds to subsidize the household unit size of the household at the top of the waiting list, the Department WILL NOT skip the top household to admit an applicant with a smaller household unit size. Instead, the household at the top of the waiting list will be admitted when sufficient funds are available. [24 CFR §982.204(d) and (e)].

(4) When a household comes to the top of the waiting list and the Department is ready to issue a voucher, the household will be notified and required to complete the full application. The household will also be required to complete a Personal Declaration Form. A household that does not respond to the request for full application more than three times will be sent a notice consistent with program policies removing them from the waiting list.

(5) A household's decision to apply for, receive, or refuse non-PHA federal, state, or local housing assistance will not affect the household's placement on the jurisdictional waiting list, or any preferences for which the household may qualify, except as specified in §5.801 of this chapter.

(h) Reporting Changes in Household Circumstances While On the Waiting List

While a household is on the waiting list, the household must immediately inform the Department of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing. Failure to provide this information may prevent the Department from being able to reach a household if a voucher becomes available and may result in removal from the waiting list.

(i) Updating of the Waiting List and Removal from the Waiting List

(1) To insure that the Department's waiting list reflects the most current applicant information the waiting list may be updated no less than every twelve months.

(2) Process.

(A) To update the waiting list, the Department will send an update request to each household on the waiting list to determine whether the household continues to be interested in, and qualifies for, the program. This update request will be sent to the last address on record for the household and to any email address provided by the household.

(B) The update request will provide a deadline by which the household must respond, which will be approximately 10 days from the date the letter is sent, and will state that failure to respond will result in the applicant's name being removed from the waiting list.

(C) The household's response to the Department must be in writing and may be delivered, by mail, or by email. Responses should be postmarked or received by the Department no later than the deadline specified in the Department's letter.

(D) If the household fails to respond by the specified deadline, the household will be removed from the waiting list without further notice. If the notice is returned to the Department by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice. If the notice is returned to the Department by the post office with a forwarding address, the notice will be re-sent to the address indicated. The household will have a new deadline specified by which to respond.

(3) Removal from the Waiting List.

(A) If a household is removed from the waiting list for failure to respond, the Department may reinstate the household to their former position on the waiting list if it determines that the lack of response was due to Department error, or to circumstances beyond the household's control. Greater flexibility in this criteria may be provided as a reasonable accommodation.

(B) If a household is removed from the waiting list because they have failed to respond to the Department's request for more information/updates or the Department has determined that they are no longer eligible for assistance, a notice will be sent to the household's address of record as well as to any alternate address or email address provided on the initial application. The notice will state the reasons the household was removed from the waiting list and will inform the household that they have 10 calendar days from the date of the written correspondence to request an informal review of the Department's decision [24 CFR §982.201(f)].

(C) If a household accepts a tenant-based public housing voucher from the Department, the household will be removed from all tenant-based public housing Department waiting lists.