

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

TDHCA Governing Board Approved Draft of**10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801, Project Access Initiative****Disclaimer**

Attached is a draft of proposed 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801, Project Access Initiative, that was approved by the TDHCA Governing Board on October 14, 2021. This action includes repeal of the current rule, and adoption of a new rule in its place. This document, including its preamble, is expected to be published in the October 29, 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 October 29, 2021**

End: 5:00 p.m. Austin local time on November 29, 2021

Comments received after 5:00 p.m. Austin local time on November 29, 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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Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801, Project Access Initiative

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801, Project Access Initiative. The purpose of the proposed repeal is to expand the pool of households that may be eligible for a Project Access voucher and facilitating a more rapid exit from an institution into the community.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being 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.

Mr. Bobby Wilkinson 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 changes to minimally expand the pool of households eligible to participate in the Project Access program.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand, limit, or repeal an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or 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.

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

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 repeal is in effect, the public benefit anticipated as a result of the changed sections would be the expanded pool of households that may be eligible for a Project Access voucher and the acceleration of a household's possible exit from an institution into the community. There will not be economic costs to individuals required to comply with the repealed 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 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 29, 2021, to November 29, 2021, to receive input on the proposed action. 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 bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, November 29, 2021.

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 amended sections affect no other code, article, or statute.

§5.801, Project Access Initiative

Preamble, including required analysis, for proposed new 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §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 rule is to expand the pool of households that may be eligible for a Project Access voucher and facilitating a more rapid exit from an institution into the community.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being 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.

Mr. Bobby Wilkinson has determined that, for the first five years the proposed new section would be in effect:

1. The new section does not create or eliminate a government program but relate to changes to existing regulations applicable to household eligibility for the Project Access program.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new section does not require additional future legislative appropriations.
4. The new section 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 section is not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.
6. The new section will not expand, limit, or repeal an existing regulation.
7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new section will not negatively or 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.

The Department has evaluated the proposed new section and determined that the proposed actions 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 new sections do 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 new section as to its possible effects on local economies and has determined that for the first five years the proposed new section 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 new section is in effect, the public benefit anticipated as a result of the new section would be expanding the pool of households that may be eligible for a Project Access voucher and facilitating a household's more rapid exit from an institution into the community. There will not be economic costs to individuals required to comply with the new sections.

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 new section 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 29, 2021, to November 29, 2021, to receive input on the proposed action. 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 bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, November 29, 2021.

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

§5.801, Project Access Initiative

(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 has applieds to the Department's Section 8 Project Access program, and exited an Institution prior to issuance of a Department Section 8 Housing Choice Voucher using an alternate short term rental assistance solution and is at risk of that short term rental assistance ending. that was a prior resident of an Institution.

(2) HHSC--Texas Health and Human Services Commission.

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

(4) 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 subsection (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.

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

(6) Non-ElderlyNon-Elderly Disabled (NED)--HUD's Non-ElderlyNon-Elderly Disabled Program.

(7) 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) be a resident of an Institution at the time of voucher issuance; or

(ii) be an At-Risk Applicant that meets ~~the one of the~~ criteria of subclauses (I) ~~or through (IV)~~ of this clause:

(I) A current recipient of Tenant-Based Rental Assistance (TBRA) from a HOME Investment Partnership Program, whose assistance from that HOME source is ~~and~~ within six months of expiration and is not eligible for extension or renewal, and was a previous resident of an Institution prior to receiving the TBRA assistance; ~~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 TBRA from a HOME Investment Partnership Program due to lack of available funding;

(III) A household that is a current recipient of rental assistance funded by HHSC, whose assistance from HHSC is within six months of expiration and is not eligible for extension or renewal, and was a previous resident of an Institution immediately prior to receiving the assistance; or

(IV) A household that is a current recipient of HHSC funded group home housing that was a previous resident of a state hospital immediately prior to receiving the group home assistance.

~~(ii) be a resident of an Institution 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 ~~Health and Human Services Commission (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 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~~ institutional Institution; and

(B) Received continuous ~~Tenant-Based Rental Assistance~~ from one of the eligible sources identified under (e)(1)(B)(ii) a HOME Investment Partnership Program or other Department funding for rental assistance from the time of exit from ~~the~~ institutional Institution until the issuance of the Project Access voucher.