

Attachment A: Preamble, including required analysis, for adopting the repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program. The purpose of the repeal is to eliminate an outdated rule, while adopting a new updated rule under separate action.

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 repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Department's Section 8 Housing Choice Voucher Program.

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

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department, nor 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 action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Department's Section 8 Housing Choice Voucher Program.

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 this repeal and determined that the 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 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 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.

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 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.

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 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 January 24, 2025, to February 24, 2025. No comment was received.

The Board adopted the final order adopting the repeal on April 10, 2025.

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 Except as described herein the repealed chapter affects no other code, article, or statute.

10 TAC Chapter 5, Section 8 Housing Choice Voucher Program

§5.801 Project Access Initiative

§5.802 Waiting List

Attachment B: Preamble for adopting the new 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes, the new 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program. The purpose of the new section is to comply with federal requirements and update procedures to include additional special purpose vouchers.

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

a. 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 new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the re adoption of this rule which makes changes to administration of the Department's Section 8 Housing Choice Voucher Programs.
2. The new rule 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 rule does not require additional future legislative appropriations.
4. The new rule will not result in an increase in fees paid to the Department nor 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 new rule will not expand or repeal an existing regulation.
7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new rule 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, in drafting this new rule, has attempted to reduce any adverse economic effect on small or micro-

business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.111.

1. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The Department has determined that because the new rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, 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 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 new 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 the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. 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..." Considering that this rule outlines administration of an existing department program and is purely administrative, there are no "probable" effects of the proposed new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, 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 federal and state requirements. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

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 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 because the rule updates and clarifies existing requirements and does not impose new requirements.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between January 24, 2025, to February 24, 2025. No comment was received.

The Board adopted the final order adopting the repeal on April 10, 2025.

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

CHAPTER 5 SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

§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 applied 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.

(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-Elderly Disabled (NED)--HUD's Non-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 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 one of the criteria of subclauses(I) 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 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;

(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.

(2) NED and Mainstream Vouchers have 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 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 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. Households will first be assessed for eligibility for NED and Mainstream Vouchers. Households eligible for PA that are not eligible for NED or Mainstream may be issued a regular Section 8 Voucher. to

(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 an Institution; and

(B) Received continuous rental assistance from one of the eligible sources identified under subsection(e)(1)(B)(ii) of this section or other Department funding for rental assistance from the time of exit from an Institution until the issuance of the Project Access voucher.

§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 (relating to Project Access Initiative). The rule does not address the specific waiting list process for project-based vouchers administered by the Department or for HUD Veterans Affairs Supportive Housing (VASH) vouchers administered by the Department. Should any special purpose vouchers, including Foster Youth to Independence (FYI) 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, including Project Access, 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.

(6) 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, such as eligibility for Project Access or FYI, 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)).

(2) 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)).

(3) 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.

(4) 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 ensure 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 resubmitted 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 criterion 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.