

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of Proposed Amendments to
10 TAC §8.3, Participation as a Proposed Development, for the Section 811 Project Rental Assistance Program

Disclaimer

Attached is a draft of proposed amendments to 10 TAC §8.3, Participation as a Proposed Development, relating to the Section 811 Project Rental Assistance Program, that was approved by the TDHCA Governing Board on May 24, 2018. This action will entail amendments to the current rule at this section. This document, including its preamble, is expected to be published in the June 8, 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 June 11, 2018
End: 5:00 p.m. Austin local time on July 11, 2018

Comments received after 5:00 p.m. Austin local time on July 11, 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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Mailing Address: PO Box 13941, Austin, TX 78711-3941
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Preamble and proposed amendments to 10 TAC Chapter 8.3 Participation as a Proposed Development

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC §8.3, Participation as a Proposed Development. The purpose of the proposed amendments is to ensure consistency with federal guidelines and other Department rules, and provide clarity to program participants.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amended section is in effect, enforcing or administering the amended section does not have any foreseeable implications related to costs or revenues for the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the amendments would be in effect:

1. The proposed amendments do not create or eliminate a government program;
2. The proposed amendments will not require a change in the number of employees of the Department;
3. The proposed amendments will not require additional future legislative appropriations;
4. The proposed amendments will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed amendments will not create a new regulation;
6. The proposed amendments will not expand, will not limit, or will not repeal an existing regulation;
7. The proposed amendments will not increase or will not decrease the number of individuals subject to the rule's applicability; and
8. The proposed amendments will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be improved clarity and consistency in guidance to enhance the efficiency and effectiveness of the Section 811 Program. There will not be any economic cost to any individuals required to comply with the amended sections. The amended sections may add some potential existing units for program consideration; but therefore there is no cost impact because of this amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the 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, by fax to (512) 475-3935 or by email to the following address: brooke.boston@tdhca.state.tx.us. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.** Austin local time on July 11, 2018. A copy of the amended section will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

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

8.3 Participation as a Proposed Development

(a) To the extent that Applications under Multifamily Rules allow for and/or require use of a Proposed Development to participate in the 811 PRA Program, the Proposed Development must satisfy the following criteria:

(1) Unless the Development is also proposing to use any federal funding or has received federal funding after 1978, the Development must not be originally constructed before 1978;

(2) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and

(3) No new construction of structures shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow subparagraphs (A) - (C) of this paragraph. Except for

sites located in coastal high hazard areas (V Zones) or regulatory floodways, existing structures are eligible in these areas, but must meet the following requirements:

(A) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.

(B) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(C) Existing structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.

(b) The following requirements must be satisfied for the Units that participate in the 811 PRA Program. Failure for a Unit to meet these requirements does not make the entire Development ineligible, rather only those Units.

(1) Units in the Development are not eligible for Section 811 assistance if they have an existing or proposed project-based or operating housing subsidy attached to them or if they have received any form of long-term operating subsidy within the last six months prior to receiving Section 811 Rental Assistance Payments.

(2) Units with an existing or proposed 62 or up age restriction are not eligible.

(3) Units with an existing or proposed limitation for persons with disabilities are not eligible. A Development having a preference for Persons with Disabilities, or a use restriction for Special Needs Populations, which could include but is not limited to Persons with Disabilities, is not a Unit limitation for purposes of this item.

(4) Units with an existing or proposed occupancy restriction for households at 30% or below are not eligible, unless there are no other Units at the Development.

(c) Developments cannot exceed the integration requirements of the Department and HUD. Properties that are exempt from the Department's Integrated Housing Rule at §1.15 of this Title (such as housing for special needs) are not exempt from HUD's Integration Requirement maximum of 25%. The maximum number of units a Development can set aside (restrict), or have an occupancy preference for persons with disabilities, including Section 811 PRA units is: 25%.

~~(1) 25% for Housing Developments with less than 50 Units, and~~

~~(2) 18% for Housing Developments with 50 or more Units or for Elderly Limitation Developments.~~

(d) Section 811 PRA units must be dispersed throughout the Development.