

**SUPPLEMENTAL BOARD BOOK
OF
July 7, 2021**



Leo Vasquez III, Chair
Kenny Marchant, Vice-Chair
Ajay Thomas, Member
Brandon Batch, Member
Anna Maria Farias, Member

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING

A G E N D A
10:00 AM
July 7, 2022

John H. Reagan Building, JHR 140
1400 Congress Ave
Austin, Texas 78701

CALL TO ORDER

ROLL CALL

Leo Vasquez, Chair

CERTIFICATION OF QUORUM

Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Tex. Gov't Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

EXECUTIVE

- a) Presentation, discussion, and possible action on Board meeting minutes summary for June 16, 2022

Beau Eccles
Board
Secretary

HOUSING RESOURCE CENTER

- b) Presentation, discussion, and possible action on the final 2022 State of Texas Consolidated Plan: One-Year Action Plan

Elizabeth Yevich
Director of
Housing Resource
Center

SINGLE FAMILY & HOMELESS PROGRAMS

- c) Presentation, discussion, and possible action on Colonia Self-Help Center Program Awards to Nueces County and Val Verde County in accordance with Tex. Gov't Code §2306.582 through Community Development Block Grant Funding
- d) Presentation, discussion, and possible action on a proposed amendment to a Colonia Self-Help Center Program Contract with Webb County in accordance with 10 TAC Chapter 25, the Colonia Self-Help Center Program Rule

Abigail Versyp
Director of Single Family
& Homeless Programs

BOND FINANCE

This will be an open, public meeting conducted under Tex. Gov't Code, chapter 551, without COVID-19 emergency waivers. There will not be a remote online or telephone option for public participation. The meeting, however, will be streamed online for public viewing. Masks will be available for members of the public who wish to attend this public meeting.

- e) Presentation, discussion, and possible action on Resolution No. 22-028 authorizing publication of Public Notice for Mortgage Credit Certificate Program; and containing other provisions relating to the subject
- f) Presentation, discussion, and possible action on Resolution No. 22-029 authorizing the filing of one or more applications for reservation to the Texas Bond Review Board with respect to Qualified Mortgage Bonds and containing other provisions relating to the subject

Heather Hodnett
Director of Bond
Finance

MULTIFAMILY BOND FINANCE

- g) Presentation, discussion, and possible action regarding the Issuance of Governmental Lender Notes (380 Villas) Series 2022A and 2022B Resolution No. 22-030, an award of Direct Loan funds, and a Determination Notice of Housing Tax Credits

Teresa Morales
Director of
Multifamily Bond

COMMUNITY AFFAIRS

- h) Presentation, discussion, and possible action on an increase in the annual expenditures for the use of the U.S. Citizenship and Immigration Services' Systematic Alien Verification for Entitlements program from \$15,000 to \$30,000 pursuant to Tex. Gov't Code §2155.088(b)(2)

Michael De Young
Director of Community
Affairs

RULES

- i) Presentation, discussion, and possible action on amendments to 10 TAC §10.601 Compliance Monitoring Objectives and Applicability; §10.602 Notice to Owners and Corrective Action Periods; §10.604 Options for Review; §10.607 Reporting Requirements; §10.608 Record Keeping Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures; §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.618 Onsite Monitoring; §10.619 Monitoring for Social Services; §10.621 Property Condition Standards; §10.622 Special Rules Regarding Rents and Rent Limits Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625; and directing their publication for public comment in the Texas Register

Wendy Quackenbush
Director of Multifamily
Compliance

MULTIFAMILY FINANCE

- j) Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Applications awarded in the 2020 and 2021 competitive 9% tax credit rounds

Cody Campbell
Director of Multifamily
Programs

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

Media Analysis and Outreach Report (May 2022)

Michael Lyttle
Director of
External Affairs

ACTION ITEMS

Executive Session: the Chair may call an Executive Session at this point in the agenda in accordance with the below-cited provisions¹

Leo Vasquez
Chair

ITEM 3: EXECUTIVE

¹ Note: the Chair is not restricted by this item, and may call for an Executive Session at any time during the posted meeting.

ITEM 4: BOND FINANCE

- a) Report on the closing of the Department's Single Family Mortgage Revenue Bonds, Series 2022A (Non-AMT) (Social Bonds)
- b) Presentation, discussion, and possible action on Resolution No. 22-031 authorizing the issuance, sale and delivery of Texas Department of Housing and Community Affairs Residential Mortgage Revenue Bonds, Series 2022B, approving the form and substance of related documents, authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this resolution, and containing other provisions relating to the subject
- c) Presentation, discussion, and possible action on Resolution No. 22-032 approving Assignment Agreements relating to Private Activity Bond Authority, and containing other provisions relating to the subject

Heather Hodnett
Director of Bond
Finance

ITEM 5: MULTIFAMILY FINANCE

- a) Report of Third Party Request for Administrative Deficiency under 10 TAC §11.10 of the 2022 Qualified Allocation Plan
- b) Presentation, discussion, and possible action on timely filed appeal of termination for The Ponderosa (#22171) under the Department's Multifamily Program Rules
- c) Presentation, discussion, and possible action on timely filed appeal of termination for The Victorian (#22174) under the Department's Multifamily Program Rules
- d) Presentation, discussion, and possible action on timely filed appeal of scoring for Weber Lofts (#22249) under the Department's Multifamily Program Rules
- e) Presentation, discussion, and possible action on timely filed appeal of scoring for Landmark 301 (#22254) under the Department's Multifamily Program Rules
- f) Presentation, discussion, and possible action on timely filed appeal of scoring for The Reserves at Monarch (#22258) under the Department's Multifamily Program Rules
- g) Presentation, discussion, and possible action on timely filed appeal of scoring for The Zeisel (#22291) under the Department's Multifamily Program Rules

Cody Campbell
Director of Multifamily
Programs

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS

The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;

Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;

Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or

Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session.

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Nancy Dennis, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Kathleen Vale Castillo, 512-475-4144, at least five days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Kathleen Vale Castillo, al siguiente número 512-475-4144 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

1b

BOARD ACTION REQUEST
HOUSING RESOURCE CENTER
JULY 7, 2022

Presentation, discussion, and possible action on the final 2022 State of Texas Consolidated Plan: One-Year Action Plan

RECOMMENDED ACTION

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) requires the submission of a One-Year Action Plan in accordance with 24 CFR §91.320;

WHEREAS, the Department has developed the draft 2022 State of Texas Consolidated Plan: One-Year Action Plan (the Plan), which reports on the intended use of funds received by the State of Texas from HUD for Program Year (PY) 2022, beginning on September 1, 2022, and ending on August 31, 2023;

WHEREAS, a public comment period was open from May 16, 2022, through June 15, 2022, and a public hearing was held on June 1, 2022, to garner input on the One-Year Action Plan and no comment was received; and

WHEREAS, HUD announced the 2022 allocations for their Community Planning and Development (CPD) formula programs on May 13, 2022, and staff has included these released amounts in this final version presented at this meeting;

NOW, therefore, it is hereby

RESOLVED, that the 2022 State of Texas Consolidated Plan: One-Year Action Plan, in the form presented to this meeting, is hereby approved and the Executive Director and his designees are each hereby authorized, empowered and directed, for and on behalf of the Department, to submit the 2022 State of Texas Consolidated Plan: One-Year Action Plan to HUD and, in connection therewith, to make such nonsubstantive grammatical and technical changes as they or HUD deem necessary or advisable.

BACKGROUND

The Texas Department of Housing and Community Affairs (TDHCA), Texas Department of Agriculture (TDA), and Texas Department of State Health Services (DSHS) prepared the draft 2022 State of Texas Consolidated Plan: One-Year Action Plan (Plan) in accordance with 24 CFR §91.320. TDHCA coordinates the preparation of the State of Texas Consolidated Plan documents. The Plan covers the State's administration of the Community Development Block Grant Program (CDBG) by TDA, the Housing Opportunities for Persons with AIDS Program (HOPWA) by DSHS, the Emergency Solutions Grant (ESG) Program, the HOME Investment Partnerships (HOME) Program, and the National Housing Trust Fund (NHTF) Program by TDHCA.¹

The Plan reflects the intended uses of funds received by the State of Texas from HUD for Program Year (PY) 2022. The Program Year begins on September 1, 2022, and ends on August 31, 2023. The Plan also illustrates the State's strategies in addressing the priority needs and specific goals and objectives identified in the 2020-2024 State of Texas Consolidated Plan.

A draft of the Plan, containing official allocation amounts, was approved by the TDHCA Governing Board for release for public comment from May 16, 2022, through June 15, 2022, and a public hearing was held on June 1, 2022. The State received no comments. However, the state has made edits based on comments received during the rulemaking period for ESG, and public comment received at the June TDHCA Board meeting regarding rental Developments.

Minor changes to the ESG program as a result of the comments received during the rulemaking period include changes that allow applicants for ESG funding to receive a continuing award without forfeiting their ability to compete for funding so long as it is in a different ESG component. In addition, references to multiyear funding cycles were removed and the program will run an annual competition.

There are no significant changes to the 2022 One-Year Action Plan compared to the 2021 One-Year Action Plan. The below chart shows the total amount of funding received and available for the 2022 program year for each program operated by TDHCA.

Program	Annual Allocation	Total Amount Available in PY 2022*
HOME	\$40,181,356	\$57,586,038
ESG	\$9,823,331	\$9,823,331
NHTF	\$47,375,117	\$89,126,113

*Total funding available includes program income and prior program year resources that are still available for PY 2022. More details are in the 2022 OYAP, Section AP-15 pp. 24-28.

¹ The Texas General Land Office (GLO) is the responsible entity for developing the State Community Development Block Grant Disaster Recovery Program (CDBG-DR) Action Plan and submitting any required amendments to the Consolidated Plan in accordance with HUD guidelines. CDBG-DR planning documents are available at <http://recovery.texas.gov/action-plans/index.html>.

Per 24 CFR §91.15(a)(1), the Plan is required to be submitted to HUD by July 18, 2022, which is at least 45 days before the start of PY 2022.

HUD Office of Community Planning and Development (CPD) announced the 2022 allocations for the CPD formula programs on May 13, 2022. Staff has included these official amounts in this final version presented at this meeting. A copy of the Plan to be approved by the Board for submission to HUD can be found online at TDHCA's Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>.

This action seeks approval to submit the Plan to HUD upon approval by the Board and prior to any deadline identified by HUD Per 24 CFR §91.15(a)(1). Staff recommends approval of this action.

1i

BOARD ACTION REQUEST

COMPLIANCE DIVISION

JULY 7, 2022

Presentation, discussion, and possible action on amendments to 10 TAC §10.601 Compliance Monitoring Objectives and Applicability; §10.602 Notice to Owners and Corrective Action Periods; §10.604 Options for Review; §10.607 Reporting Requirements; §10.608 Record Keeping Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures; §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.618 Onsite Monitoring; §10.619 Monitoring for Social Services; §10.621 Property Condition Standards; §10.622 Special Rules Regarding Rents and Rent Limits Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625; and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, staff proposes clarification and changes to improve the efficiency of the compliance monitoring procedures of multifamily developments awarded funds under various Department programs;

WHEREAS, staff also proposes several changes to 10 TAC Chapter 10 Subchapter F, Compliance Monitoring Rules, that are needed to incorporate HOME American Rescue Plan Act (HOME-ARP) program requirements, as permitted by HUD Community Planning and Development (CPD) Notice 21-10;

WHEREAS, the Compliance Monitoring Section had an in-person roundtable to discuss potential amendments to the Compliance Monitoring Rule, 10 TAC Chapter 10 Subchapter F on April 8, 2022, with the purpose of soliciting feedback on the rules from the Department's stakeholders and several suggestions were incorporated into the proposed rule action that add clarity and further define processes that were already in practice;

WHEREAS, this rule was last adopted in 2020 and changes are now needed to add direction for Owners, management companies and property staff on clarifying program requirements in multiple sections, remove or correct duplicative language and references, establish consistency with rules in 10 TAC Chapter 10 Subchapters E and G and 10 TAC Chapter 8, further clarify language and requirements on which questions are often received, correct references to forms or attachments that have been updated, and clarify, add and remove requirements for Developments monitored by the Department;

WHEREAS, staff recommends to the Board that there is a continuing need for these rule sections to exist, which is to ensure compliance with applicable sections of Tex. Gov't

Code Chapter 2306, Internal Revenue Code §42, and applicable sections of 24 CFR §92.504 and 24 CFR §93.404; and

WHEREAS, such proposed rulemaking will be published in the *Texas Register* for public comment from July 22, 2022, through August 22, 2022, and subsequently returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed actions, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections, or preamble-related corrections, as they may deem necessary to effectuate the foregoing, including the preparation and requested revisions to the subchapter specific preambles.

BACKGROUND

Tex. Gov't Code §2306.053 provides for the Department to administer federal housing, community affairs, and community development programs, including the low income housing tax credit program. The Compliance Division and its Rules, as a whole, are an integral part of monitoring the Department's federal housing programs, assisting in: reviewing and ensuring the long-term affordability, compliance and safety of multifamily rental housing Developments in the Department's portfolio as required under Tex. Gov't Code §§2306.185 and 2306.186; performing the functions of monitoring compliance as required under §§2306.6719; and performing essential functions required under various federal program (HOME, NSP, NHTF, Exchange, TCAP, Bond, 811 PRA) rules and under Section 42 of the Internal Revenue Code.

On April 8, 2022, the Compliance Division held an in person roundtable to solicit feedback from the Department's stakeholders on the current Compliance Monitoring rules. Additionally, the Department accepted informal written input from interested parties for a period of 30 days after the roundtable. The Compliance Division reviewed all verbal and written feedback and incorporated some of the comments into the proposed rule action when practical and feasible.

These rules were last revised on May 17, 2020. Staff recommends that these rules be revised to:

- incorporate HOME-ARP program requirements,
- further clarify language and requirements on which questions are often received,
- correct references to processes, other rules and forms that have been updated,
- remove the option of review under the corrective action period since owners have an additional 10-day corrective action period,
- remove quarterly reporting requirements on Developments funded with Exchange and TCAP since this process is no longer needed by the Asset Management Division,
- include guidance on corrective action for Developments that experience casualty loss,
- simplify language on changing household designations, and
- incorporate corrective action deadline for Exigent Health and Safety deficiencies.

Non-substantive changes related to requirements for the HOME-ARP program are proposed for 10 TAC §10.601 Compliance Monitoring Objectives and Applicability, 10 TAC §10.602 Notice to Owners and Corrective Action Periods, 10 TAC §10.610 Written Policies and Procedures, 10 TAC §10.615 Elections under IRC §42 and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments, 10 TAC §10.618 Onsite Monitoring, 10 TAC §10.619 Monitoring for Social Services and 10 TAC §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

The proposed draft of the 2022 Compliance Monitoring Rule reflects staff's recommendations for the Board's consideration. Behind the proposed preamble for the proposed rule action is the rule shown in its blackline form reflecting changes to the rule that is proposed for repeal.

Only the sections noted in the recitals and proposed for action will be published in the *Texas Register* for public comment. Proposed substantive changes are explained below.

Upon Board approval, the proposed rule action will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted from July 22, 2022, through August 22, 2022. The Compliance Monitoring Rules, after consideration of public comment, will be brought before the Board on October 13, 2022, for final approval and subsequently published in the *Texas Register* for adoption.

Summary of Proposed Changes:

§10.604 Options for Review. Staff is proposing to delete 10 TAC §10.604(a) as it is no longer needed since an additional 10-day corrective action period was made available to owners in the previous rule revision in May 2020. Specifically the following language is proposed to be deleted:

"If, during the Corrective Action Period, an Owner supplies evidence of continual compliance, this issue of noncompliance will be dropped, and no further action will be taken (e.g., for HTC properties, IRS Form 8823 will not be filed with the IRS)."

§10.607 Reporting Requirements. Staff is proposing to delete 10 TAC §10.607(d)(2) as this process is no longer required by the Asset Management Division. Asset Management reviews the financial data of developments with the annual submission of the Annual Owner's Financial Report. Specifically the following language is proposed to be deleted:

"Developments funded with Exchange or TCAP must also submit a "Quarterly Owner's Financial Certification" and these must be submitted in January, April, July, and October on the 15th business day of the month."

§10.607 Reporting Requirements. Staff is proposing to add new language regarding the submission of IRS Form(s) 8609 with Part II completed to the Department. Owner's elections on Part II of the 8609 will determine how projects are monitored for minimum set-aside, recertifications and project requirements and these forms are required for accurate monitoring of Housing Tax Credit Developments. Additionally, staff is adding a new condition that would require owners nearing the end of their affordability period to notify existing households and current applicants in writing what the new proposed rents will be and if the Development will be renovated. This six-month notification requirement would allow current low-income households time to find other affordable housing options if the Development moves to "market" rents or plans to displace households during a rehabilitation after the term of the Land Use Restriction Agreement has ended.

§10.608 RecordKeeping Requirements. Staff has added new language clarifying that electronic monitoring records are allowable. The Department has already provided this guidance, but is now formalizing this in the rules. Additionally, a new requirement is being proposed that would require the property’s current waiting list be submitted to the Department prior to the ownership or management agent change. The reason for the proposed addition is that many ownership and management changes occur that the Department only learns about through resident complaints; and in some cases the existing waiting list is not provided to the new incoming entity and potential applicants are moved off of the list or lose their position on the waiting list.

§10.609 Notices to the Department. Staff proposes to clarify what corrective action documentation is required when a Development experiences a Casualty Loss. There are already standard documents to be submitted upon the completion of restorative repairs due to a Casualty Loss; however, they are not currently provided for in the rule. By adding it to the rule, staff is providing clear and transparent information on what is required to address corrective action for Casualty Loss upon restoration.

§10.611 Determination, Documentation and Certification of Annual Income. Staff proposes new language to incorporate HOME-ARP program requirements for Qualified Populations. HOME-ARP is the Compliance Division’s newest housing program that will require monitoring and the revisions ensure all pertinent program requirements are included in the proposed rule for the Owners, management companies and staff responsible for compliance with HOME-ARP. In addition, staff is proposing to simplify the language related to the Owner’s ability to change a household’s income/rent designation from the time of move-in. The examples were no longer needed because the program rules describe the scenarios in which a designation can change, e.g. student rule. The proposed language is shown below:

“(c) A household’s lowest designation, as recorded on the Income Certification and the Unit Status Report, at the time of move in, cannot be increased unless the household no longer income qualifies or program rules required the change.”

§10.612 Tenant File Requirements. Staff proposes new language to include HOME-ARP program requirements and specifically address certain tenant file requirements for HOME-ARP Qualified Populations. The proposed language is shown below:

(d) Tenant File requirements for HOME-ARP Qualified Populations units. Files for households assisted under the HOME-ARP program as Qualified Population must document evidence that the households meet the definition of:

(1) Homeless as defined in 24 CFR §91.5;

(2) At-risk of homelessness as defined in 24 CFR §91.5;

(3) Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking, as defined in CPD Notice 21-10;

(4) Other Families Requiring Services or Housing Assistance to Prevent Homelessness, which are households who have previously been qualified as homeless, are currently housed due to temporary, or emergency assistance, including financial assistance, services, temporary rental assistance or some type of other assistance to allow the

household to be housed, and who need additional housing assistance or supportive services to avoid a return to homelessness;

(5) *At Greatest Risk of Housing Instability as cost burdened, which are households who have an annual income that is less than or equal to 30% of the area median income, as determined by HUD and is experiencing severe cost burden (i.e. is paying more than 50% of monthly household income toward housing costs.); or*

(6) *At Greatest Risk of Housing Instability, which meets the definition of at-risk of homelessness as defined in 24 CFR §91.5, but with an income up to 50% AMI.*

§10.613 Lease Requirements. Staff is proposing the addition of HOME-ARP requirement regarding when Owner's may not terminate a resident's tenancy when a unit is supported by capitalized operating costs. The proposed language is shown below:

"For HOME-ARP, Owners may not terminate the tenancy or refuse to renew the lease of the Qualifying Household in any Unit that is supported by capitalized operating costs because of the household's inability to pay rent of more than 30 percent of the qualifying household's income toward rent during the longer of the federal affordability period or the time period identified in the Contract."

§10.614 Utility Allowances. Staff is proposing a revision to subsection (g) which changes the beginning of the 90-day implementation period for a PHA utility allowance from the date the PHA releases a new allowance to the published effective date on said allowance. Staff feels the current practice of expecting owners to monitor the utility allowance release dates of numerous PHAs is unreasonable.

Also in subsection (g), staff proposes new language that addresses a property's failure to submit for annual review of an alternate utility allowance method. Under current policy, if an owner fails to submit within a calendar year, the development fails to have a utility allowance; therefore, monitors are unable to determine whether rents are restricted. Once a new utility allowance is implemented, rents are only tested at that point in time, meaning that all rents paid during the period of noncompliance are never monitored. Staff proposes the following language be added:

"With the exception of MFDL developments, if an Owner fails to submit for annual review during the calendar year, the Development's Utility Allowance will default to the applicable PHA allowance. If the Development is located in an area that does not have a PHA, the Development fails to have a properly calculated Utility Allowance. The Utility Allowance for MFDL Developments that fail to submit for annual review will default to the HUD Utility Model Scheduled."

The default of the PHA allowance aligns with 26 CFR §1.42-10 and will allow monitors to ensure rents are restricted.

In subsection (k), relating to utility allowances for application of funding, staff proposes the following new language: *"Any requests for new applications on existing developments (either additional funds or Acquisition/Rehab) must use the method that is in effect on the existing Development. If the Owner wishes to change methods for the purposes of the application, a request for the existing Development must first be submitted to the Compliance Division for approval."* This will prevent buildings from having more than one approved utility allowance.

In addition, Staff proposes the following language which would clarify the process if an incomplete submission is made for an application Utility Allowance: *“If back-up is not submitted the Utility Allowance will be calculated using the HUD Utility Schedule Model as described in subsection (d)(3).”* This will streamline the process and get Owners what they need to submit full applications in a timely manner. Owners may always request a new allowance at a later time.

Lastly, Owners are permitted to use the utility allowance approved for underwriting until the building reaches 90% occupancy for a period of 90 consecutive days, or the end of the first year of the credit period (if applicable), whichever is earlier. Staff proposes the following new language: *“Once a request to change the utility allowance is approved or implemented, the utility allowance used at underwriting is no longer valid.”* This is already common practice for most Owners. The clarification will prevent, for example, a development that has implemented a 2022 PHA allowance from returning to the 2019 PHA allowance in order to increase rents.

All other changes proposed by staff are to clarify existing practice and are non-substantive.

§10.621 Property Condition Standards. Staff is proposing to add an existing requirement that is in the Uniform Physical Condition Standards (UPCS) protocol, which requires Owner’s to correct all Exigent and Fire Safety (E&FS or EH&S) immediately and submit a certification of correction within 3 business days to the Department. Failure of an Owner to submit the required certification will result in a finding of noncompliance that could affect an Owner negatively during a Previous Participation Review in accordance with 10 TAC Chapter 1, Subchapter C. Adding the proposed language would codify how these issues are processed internally by the Department.

§10.622 Special Rules Regarding Rents and Rent Limit Violations. Staff is proposing to add language that includes the definition of program rent and expands the options to Owners and households when refunding rent is proposed. Currently the rule specifies that if an Owner collects rent in excess of the allowable limit, the Owner’s only option is to refund the affected household. Staff proposes to allow Owners’ to either refund or “credit” the excess rent to the household based on the household’s written preference.

Additionally, if a trust account has to be established because an Owner cannot refund or credit a previous household who overpaid rent, that a single trust account may be set up if the rent violation effects multiple households.

In addition, staff is proposing a new requirement that if an Owner is increasing a household’s rent \$75 or more per month, the Owner is required to provide the household a 120 day written notice of such increase. Staff has been flooded with calls and complaints on the amount of rent increases that some Owners are requiring that is very difficult for low-income households to pay or budget for. This would allow low-income households enough time to budget for such a large rent increase or to find alternative housing.

Lastly, new language is proposed for HOME-ARP program rent adjustments for Qualified Populations. The proposed language is shown below:

(h) Rent Adjustments for HOME-ARP Qualified Populations:

(1) Units restricted for occupancy by qualifying populations with incomes equal or less than

50% will have rents of 30% of the adjusted income of the household, with adjustments for number of bedrooms in the unit.

(2) Units restricted for occupancy by qualifying populations with incomes greater than 50% of median income but at or below 80% of the median income must pay rent specified in 24 CFR 92.252(a), high HOME rent.

(3) Units restricted for occupancy by qualifying populations with incomes greater than 80% of median income will follow the rent adjustments of 10.622(g).

§10.624 Compliance Requirements for Developments with 811 PRA Units. Staff is recommending adding three new finding categories that are federally required by the Section 811 PRA program. The new findings are: improperly charging an application or late fee, failing to issue HUD notices, and failure to issue utility allowance reimbursement in accordance with Chapter 8.

In addition, staff is recommending removing some requirements from this section of the rule. These requirements have been moved to 10 TAC §8.6, the rule that governs the Section 811 PRA Program. Specifically the following language is proposed to be deleted:

(a) One hundred and eighty days prior to the date an Owner expects to begin leasing, Developments that have agreed to rent Units to households assisted by Section 811 PRA must contact Department staff and begin accepting referrals. Failure to reserve the agreed upon number of Units for 811 households will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for debarment.

(b) Throughout the term of an 811 PRA Use Agreement, Owners must maintain the required number of 811 PRA households, and provide notice to the Department when an 811 PRA household is expected to vacate. Notice must be provided within seven calendar days of when the Development is notified that the household will vacate or in the event that the resident vacates without notice, upon discovery that the unit is vacant. Failure to notify the Department will be cited as noncompliance and will be referred to the Enforcement Committee to be considered for possible administrative penalties and may be proposed for debarment, in accordance with the Enforcement Rule under 10 TAC Chapter 2.

Attachment 1: Preamble, including required analysis, for proposed amendments to 10 TAC §10.601 Compliance Monitoring Objectives; 10 TAC §10.602 Notice to Owners and Corrective Action Periods; 10 TAC §10.604 Options for Review; 10 TAC §10.607 Reporting Requirements; 10 TAC §10.608 Record Keeping Requirements; 10 TAC §10.609 Notices to the Department; 10 TAC §10.610 Written Policies and Procedures; 10 TAC §10.611 Determination, Documentation and Certification of Annual Income; 10 TAC §10.612 Tenant File Requirements; 10 TAC §10.613 Lease Requirements; 10 TAC §10.614 Utility Allowances; 10 TAC §10.615 Elections under IRC §42 and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; 10 TAC §10.616 Household Unit Transfer Requirements for All Programs; 10 TAC §10.618 Onsite Monitoring; 10 TAC §10.619 Monitoring for Social Services; 10 TAC §10.621 Property Condition Standards; 10 TAC §10.622 Special Rules Regarding Rents and Rent Limit Violations; 10 TAC §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; 10 TAC §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments 10 TAC §10.601 Compliance Monitoring Objectives; 10 TAC §10.602 Notice to Owners and Corrective Action Periods; 10 TAC §10.604 Options for Review; 10 TAC §10.607 Reporting Requirements; 10 TAC §10.608 Record Keeping Requirements; 10 TAC §10.609 Notices to the Department; 10 TAC §10.610 Written Policies and Procedures; 10 TAC §10.611 Determination, Documentation and Certification of Annual Income; 10 TAC §10.612 Tenant File Requirements; 10 TAC §10.613 Lease Requirements; 10 TAC §10.614 Utility Allowances; 10 TAC §10.615 Elections under IRC §42 and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; 10 TAC §10.616 Household Unit Transfer Requirements for All Programs; 10 TAC §10.618 Onsite Monitoring; 10 TAC §10.619 Monitoring for Social Services; 10 TAC §10.621 Property Condition Standards; 10 TAC §10.622 Special Rules Regarding Rents and Rent Limit Violations; 10 TAC §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; 10 TAC §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625. The amendments include HOME-ARP rental program requirements within numerous section of the rule; deletion of unnecessary requirements from the rule, simplification of language when an owner may change a household's income/rent designation, and addition of new notification requirements regarding rent increases, when a Development's LURA term is expiring and when the PHA utility allowance requirement becomes effective. Additionally, the new rule codifies corrective action requirements for Casualty Loss and Exigent Health and Safety issues.

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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed rule action would be in effect, the proposed actions do not create or eliminate a government program, but relate to changes to an existing activity, compliance monitoring.
2. The proposed rule action does not require a change in work that would require the creation of new employee positions, nor are the proposed actions significant enough to reduce workload to a degree that any existing employee positions are eliminated.
3. The proposed rule action does not require additional future legislative appropriations.

4. The proposed rule action does not result in an increase in fees paid to the Department or in a substantial decrease in fees paid to the Department.
5. The proposed rule action is not creating a new regulation.
6. The proposed rule action will not repeal an existing regulation.
7. The proposed rule action will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rule action 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.

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

2. This rule relates to the procedures for the handling of compliance monitoring activities of multifamily developments awarded funds through various Department programs. Other than, in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the proposed rule provides for more clear, transparent processes and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for compliance monitoring activities of the Department's portfolio, 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 proposed rule action 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 proposed rule action as to its possible effects on local economies and has determined that for the first five years the proposed actions are 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.

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..." Considering that no impact is expected on a statewide basis, there are also 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. Wilkinson has determined that, for each year of the first five years the proposed rule action is in effect, the public benefit anticipated as a result of the action will be a clearer and more germane rule. 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 rule action is in effect, enforcing or administering the proposed rule action 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 from July 22, 2022, to August 22, 2022, to receive input on the proposed rule action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Compliance Monitoring Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email to wendy.quackenbush@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time August 22, 2022.

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

§10.601 Compliance Monitoring Objectives and Applicability

(a) The objectives of the Department in performing regular monitoring of affordable rental housing are:

(1) To provide for monitoring that meets applicable requirements of:

(A) The U.S. Department of Housing and Urban Development (HUD);

(B) The U.S. Department of the Treasury (Treasury);

(C) The Internal Revenue Service (the IRS); and

(D) Applicable state laws and rules;

(2) To enable the Department to report information to HUD, Treasury, the IRS, and the Governing Board, as required, regarding the condition and operations of such developments;

(3) To enable the Department to communicate with responsible persons regarding the condition and operation of their developments and understand clearly, with a documented record, how they are performing in meeting their obligations;

(4) To identify matters of noncompliance so that they can be appropriately addressed and to assist in targeting issues that may require compliance assistance education;

(5) To ensure that responsible persons understand the compliance status of their developments and the implications of such status;

(6) To articulate and communicate clear standards to promote the maintenance and operation of such developments in a manner that meets the high standards of the Department's affordable rental programs; and

(7) To provide a transparent system whereby all interested parties, including residents, community organizations, local governmental entities, and the affordable housing industry, may find accountability, consistency, and an awareness of the high quality standards of affordable housing in the State of Texas.

(b) This subchapter applies to the monitoring of affordable rental housing under the programs described in paragraphs (1) - (11) of this subsection:

(1) The Housing Tax Credit Program (HTC);

(2) The HOME Investment Partnerships Program (HOME);

(3) The Tax Exempt Bond Program (Bond);

(4) The Texas Housing Trust Fund Program (HTF, ~~or~~ SHTF, or THTF);

(5) The Tax Credit Assistance Program (TCAP);

(6) The Tax Credit Exchange Program (Exchange);

(7) The Neighborhood Stabilization Program (NSP);

(8) Section 811 Project Rental Assistance (811 PRA or 811) Program;

(9) Tax Credit Assistance Program Repayment Funds (TCAP RF); ~~and~~

(10) The National Housing Trust Fund (NHTF); and

(11) HOME American Rescue Plan (HOME--ARP) -

(c) Monitoring activity evaluates the physical condition of the Developments and whether they are being operated in documented compliance with program requirements.

(d) The results of the Department's monitoring activities will be documented and, communicated to the owner in writing within 90 days of the monitoring visit.

(e) The Department may contract with an independent third party to monitor a Development during its construction or rehabilitation and during its operation for compliance with any conditions imposed by the Department in connection with the award of any Department funds, including allocations of housing tax credits, and appropriate state and federal laws, rules, regulations, orders, and other applicable legal requirements.

(f) The capitalized terms or phrases used herein are defined in this title. Any other capitalized terms in this subchapter shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

§10.602 Notice to Owners and Corrective Action Periods

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) timely or if the Department discovers through monitoring, audit, inspection, review, or any other manner that the Development is not in compliance with the provisions of the LURA, deed restrictions, application for funding, conditions imposed by the Department, this subchapter, or other program rules and regulations, including but not limited to §42 of the Internal Revenue Code.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a 30 day Corrective Action Period for noncompliance related to the AOCR, and a 90 day Corrective Action Period for other violations. During the Corrective Action Period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the Event of Noncompliance has been corrected. Documentation of correction must be received during the Corrective Action Period for an event to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the Owner requests an extension during the original 90 day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: compliance.extensionrequest@tdhca.state.tx.us. If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each finding, but does not fully address all findings, the Department will give the Owner written notice and an additional 10 calendar day period to submit evidence of full corrective action. References in this subchapter to the Corrective Action Period include this additional 10 calendar day period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information,

including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) ~~Treasury Regulations require~~ ~~It~~ the Department ~~to will~~ notify ~~Housing Tax Credit~~ Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy, and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Unless otherwise required by law or regulation, Events of Noncompliance will not be reported to the IRS, referred for enforcement action, considered as cause for possible debarment, or reported in an applicant's compliance history or Previous Participation Review, until after the end of the Corrective Action Period described in this section.

(f) Upon receipt of facially valid complaints the Department may contact the Owner and request submission of documents or written explanations to address the issues raised by the complainant. The deadline to respond to the issue will be specific to the matter. Whenever possible and not otherwise prohibited or limited by law, regulation, or court order, the complaint received by the Department will be provided along with the request for documents or Owner response.

§10.604 Options for Review

~~(a) If, during the Corrective Action Period, an Owner supplies evidence of continual compliance, the issue of noncompliance will be dropped, and no further action will be taken (e.g., for HTC properties, IRS Form 8823 will not be filed with the IRS).~~

~~(b)~~ (a) If, following the submission of corrective action documentation, Compliance staff continues to find the Owner in noncompliance, the Owner may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to the inclusion or exclusion of tenant income, assets, or appropriate household size, the National Center for Housing Management (NCHM) can be contacted. In order to obtain guidance from NCHM, the requestor must have an active Certified Occupancy Specialist designation. If no representative of the owner has this designation, Department staff may make the request on the owner's behalf.

(2) If the compliance matter is related to the Housing Tax Credit program, Owners may contact the IRS Program Analyst for guidance or request that Department staff contact the IRS for general guidance without identifying the taxpayer. The issue will be handled in accordance with the guidance received from the IRS.

(3) If the compliance matter is related to the HOME, NHTF, ~~or~~ NSP, HOME-ARP program, Owners may request that the Department contact the U.S. Department of Housing and Urban Development Texas Field Office for guidance. The issue will be handled in accordance with guidance received from a HUD official with oversight responsibility, provided it is clear and can be corroborated (e.g., such guidance is provided in

writing).

(4) Owners may request Alternative Dispute Resolution (ADR). An Owner may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title (relating to Alternative Dispute Resolution). Note that even if the Department and Owner are engaged in ADR, the Department must meet Treasury Regulation §1.42-5 and file IRS Form 8823 within 45 days after the end of the Corrective Action Period. Therefore, it is possible that the Owner and Department may still be engaged in ADR when an IRS Form 8823 is filed. Should this happen, the form, including all Owner-supplied documentation, will be sent to the IRS with an explanation that the Owner disagrees with the Department's assessment and is pursuing ADR. Although the violation will be reported to the IRS within the required timeframes, it will not be considered part of an applicant's compliance history nor subject to administrative penalties pending the outcome of the ADR process.

§10.607 Reporting Requirements

(a) The Department requires reports to be submitted electronically through CMTS and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be emailed to cmts.requests@tdhca.state.tx.us for:

(1) 9% Housing Tax Credit Developments - no later than ~~the date prescribed in §10.402(g) of this chapter (relating to the 10% Test);~~

(2) 4% Housing Tax Credit Developments - no later than ~~the date prescribed in §10.402(e) of this chapter (relating to Post Bond Closing Documentation Requirements);~~ or

(3) For all other rental Developments, no later than September 1st of the year following the award.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (e) of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2019~~5~~. The first report is due April 30, 20~~21~~~~17~~, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of four parts:

(1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules;

(2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The certified answers to the questions on Part C satisfy this requirement; and

(4) Part D "Form 8703." Tax exempt bond properties funded by the Department must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(d) The Owner is required to report certain financial information to the Department electronically through CMTS. If supplemental information is required, it must be uploaded to the Development's CMTS account. "Annual Owner's Financial Certification" (formerly Part D of the AOCR). Developments funded by the Department must annually provide and certify to the data represented in the Annual Owner's Financial Certification (AOFC).

~~(1) "Annual Owner's Financial Certification" (formerly Part D of the AOCR). Developments funded by the Department must annually provide and certify to the data requested in the Annual Owner's Financial Certification (AOFC).~~

~~(2) Developments funded with Exchange or TCAP must also submit a "Quarterly Owner's Financial Certification" and these must be submitted in January, April, July, and October on the 15th business day of the month.~~

(e) Parts A, B, C, and D of the AOCR and the Annual Owner's Financial Certification AOFC must be provided to the Department no later than April 30th of each year, reporting data current as of December 31st of the previous year (the reporting year).

(f) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status Report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences. Failure to report occupancy timely will result in a finding of noncompliance.

(g) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(h) All rental Developments funded or administered by the Department will be required to submit an current up-to-date Unit accurate Unit Status Report prior to an ~~onsite~~ monitoring review visit and/or a physical inspection.

(i) Housing Tax Credit Developments must submit IRS Form(s) 8609 with Part II complete through CMTS by the end of the first year of the credit period. If an owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings within the project.

(j) Within six (6) months but at least 90 days -prior to the end of the Affordability Period and/or the end of the Land Use Restriction Term, the Owner must provide written notice to the current tenants and applicants. If the Development Owner has been approved for new funding, through the Department, and/or awarded new credits such notice is not required. The Notice must contain the following: proposed new rents, any rehabilitation plans and information on how to access the Departments Vacancy Clearinghouse to locate other affordable housing options.

§10.608 Record-Keeping Requirements

(a) Development Owners must comply with program recordkeeping requirements. Records must include sufficient information to comply with the reporting requirements of §10.607 of this chapter (relating to Reporting Requirements) and any additional programmatic requirements. HTC Development Owners must retain records sufficient to comply with the reporting requirements of Treasury Regulation 1.42-5(b)(1). Records must be kept for each qualified Low-Income Unit and building in the Development, commencing with lease up activities and continuing on a monthly basis until the end of the Affordability Period.

(b) Each Development that is administered by the Department must retain records as required by the specific funding program rules and regulations and executed contracts or Land Use Restriction Agreements. In general, retention schedules include, but are not limited to, the provision of subsections (c) - (g) of this section.

(c) HTC records must be retained for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building (§1.42-5(b)(2) of the Code).

(d) Retention of records for ~~NHTF~~, TCAP-RF, HOME, and HOME-ARP rental Developments must comply with the provisions of 24 CFR §92.508(c) and 24 CFR §93.407(b), which generally requires retention of rental housing records for five years after the Affordability Period terminates. HOME-ARP rental Developments must also comply with HUD CPD Notice 21-10.

(e) Retention of records for NHTF must comply with the provisions of 24 CFR §93.407(b), which generally require retention of rental housing records for five years after the Affordability Period terminates.

~~(e f)~~ Retention of records for NSP rental Developments must comply with the provisions of 24 CFR §570.506, which generally requires retention of rental housing records for five years after the Department has closed out the grant with HUD.

~~(f g) Texas Housing Trust Fund (THTF)~~ rental Developments must retain tenant files for at least three years beyond the date the tenant moves from the Development. Records pertinent to the funding of the award, including, but not limited to, the Application and Development costs and documentation, must be retained for at least five years after the Affordability Period terminates.

~~(g h)~~ Section 811 PRA tenant records must be maintained for the term of tenancy plus three years. After the end of the record retention period, all Enterprise Income Verification (EIV) data must be destroyed.

~~(h i)~~ Other rental Developments funded or administered in whole or in part by the Department must comply with record retention requirements as required by federal regulations, statute, rule, or deed restriction.

~~(i j)~~ All required records must be made available and accessible for on-site when an onsite monitoring review, physical inspection, and whenever requested by the Department. occurs. The Department permits electronic records. Digital signatures of both property management and household are acceptable. Developments should have policies in place that allow the household to choose between electronic or hard copy documents. It is the responsibility of the Development Owner to maintain policies and procedures that mitigate fraud, waste, and abuse on an ongoing basis.

(k) Prior to completion of ownership and/or management agent change, a current waitlist must be

submitted to the Department through CMTS.

§10.609 Notices to the Department

If any of the events described in paragraphs (1) - (7) of this section occur, written notice must be provided to the Department within the respective timeframes. Failure to do so will result in an Event of Noncompliance, and may be taken into consideration during Previous Participation Reviews in accordance with Chapter 1 Subchapter C of this title, or in Enforcement actions in accordance with Chapter 2 of this title.

(1) Written notice must be provided at least 30 days prior to any proposed sale, transfer, or exchange of the Development or any portion of the Development, and the Department must give its prior written approval to any such sale, transfer, or exchange, which will include a previous participation review on the proposed new ownership, requiring that they complete and provide a Previous Participation Review Form, in accordance with §10.405;

(2) Notification must be provided within 30 days following the event of any casualty loss, in whole or in part, to the Development, using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster). Within 30 days of completion of all restorative repairs, the Owner must provide the executed Notice of Property Restoration accompanied by all supporting documentation. Supporting documentation can include, but is not limited to: Certificates of Occupancy, photographs of all restorative repairs completed on buildings and/or units, invoices from contractors, insurance assessments and/or a written summary of restorative repairs required. The Department may require additional documentation not specified in this section on a case-by-case basis;

(3) Owners of Bond Developments shall notify the Department of the date on which 10% of the Units are occupied and the date on which 50% of the Units are occupied, and notice must occur within 90 days of each such date;

(4) Within 30 days after a foreclosure, the Department must be provided with documentation evidencing the foreclosure and a rent roll establishing occupancy on the day of the foreclosure;

(5) Within 10 days of a change in the contact information (including contact persons, physical addresses, mailing addresses, email addresses, phone numbers, and/or the name of the property as know by the public) for the Ownership entity, management company, and/or Development the Department's CMTS must be updated. Separate contact information must be provided for Ownership entity, management company, and onsite manager at the Development. A single contact may be used for the owner and management if they are the same entity.

(6) Within 30 days of completion of the American Institute of Architects form G704- Certificate of Substantial Completion, or Form HUD-92485 for instances in which a federally insured HUD loan is utilized, an Owner must request a Final Construction Inspection; and

(7) ~~Owners of Developments that participate~~ Development Owners that have agreed to participate in the Section 811 PRA program are required to notify the Department about the availability of Units as described in accordance with §8.2(l)(3) and §8.2(l)(4). ~~10.624 of this subchapter.~~

§10.610 Written Policies and Procedures

Written Policies and Procedures are a required ~~ment of the Department on monitored Developments as~~

~~specified provided for in more specificity~~ at §10.802 of this chapter (relating to Written Policies and Procedures).

§10.611 Determination, Documentation and Certification of Annual Income

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program administered by HUD, using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3, as amended from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing IRS Form 8823, the IRS guidance will be controlling. At the time of program designation as a low income household, Owners must certify and document household income. In general, all low income households must be certified prior to move in. Certification and documentation of household income is an Owner's responsibility, even if the Owner is using a manager's or management company services to handle tenant intake and leasing. Accordingly, Owners should ensure that they hire competent and properly trained managers or management company and that they exercise appropriate oversight of any manager's or management company activities.

(b) For the initial certification of a household residing in a HOME, NHTF, NSP, ~~or~~ TCAP RF, or HOME-ARP assisted unit, Owners must examine at least two months (60 days) of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation). Qualified populations in HOME-ARP units may not need to meet an income requirement upon move-in, but will have their income verified to determine rental portion of payment.

(c) A household's lowest designation, as recorded on the Income Certification and Unit Status Report, at the time of move in, cannot be increased unless the household no longer income qualifies for the unit or program rules required the change. A household's income designation at the time of move in cannot be changed unless:

- ~~(1) The household goes over income and they are replaced with another low income household;~~
- ~~(2) The Development has a written policy and procedure for changing household designations as household income changes;~~
- ~~(3) The household receives rental assistance, and due to changes in their income, their portion of required rent exceeds the rent limit of their move in designation;~~
- ~~(4) The household is designated as Market Rate and a certification is performed that completely and clearly documents that the household is qualified as low income;~~
- ~~(5) The household has been designated as low income and they become, or it is determined that they have been, an ineligible full time student household. If the Development has Units that do not have student restrictions, the household can continue occupancy, and their designation may be removed; or~~
- ~~(6) The household's designation is being lowered.~~

§10.612 Tenant File Requirements

(a) At the time of program designation as a low income household or Qualified Population for HOME-ARP, typically at initial occupancy, Owners must create and maintain a file that at a minimum contains:

- (1) A Department approved Income Certification form signed by all adults. At the time of program designation as a low income household or Qualified Population, Owners must certify and document

household income. In general, all low-income households and Qualified Populations for HOME-ARP must be certified prior to move in. The Department requires the use of the TDHCA Income Certification form, unless the Development also participates in the USDA - Rural Development or a Project Based HUD Program, in which case, the other program's Income Certification form will be accepted;

(2) Documentation to support the Income Certification form including, but not limited to, applications, first hand or third party verification of income and assets, and documentation of student status (if applicable). Beginning January 1, 2021, the application must provide a space for applicants to indicate if they are a veteran. In addition, the application must include the following statement: "Important Information for Former Military Services Members. Women and men who served in any branch of the United States Armed Forces, including Army, Navy, Marines, Coast Guard, Air Force, Reserves or National Guard, may be eligible for additional benefits and services. For more information please visit the Texas Veterans Portal at <https://veterans.portal.texas.gov/>;

(3) The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form. Owners should scrutinize these documents to identify and address any obvious attempts at forgery, alteration, or generation of falsified documents; and

(4) A lease with all necessary addendums to ensure that compliance with applicable federal regulations and §10.613 of this subchapter (relating to Lease Requirements).

(b) Annually thereafter on the anniversary date of the household's move in or initial designation:

(1) Throughout the Affordability Period, all Owners of Housing Tax Credit, TCAP, and Exchange Developments must collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, student status, and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form, ~~or~~ the Income Certification form, ~~or~~ HUD Income Certification form, ~~or~~ USDA-Rural Development Income Certification form (as applicable).

(2) During the Compliance Period for all Housing Tax Credit, TCAP, and Exchange Developments and throughout the Affordability Period for all Bond ~~D~~developments and HOME, HOME Match and TCAP RF, and HOME-ARP Developments, Owners must collect and maintain current student status data for each low-income household. This information must be collected within 120 days before the anniversary of the effective date of the original Income Certification ~~student verification~~ and can be collected on the Department's Annual Eligibility Certification or the Department's Certification of Student Eligibility form or the Department's Income Certification form. Throughout the Compliance Period for HTC, TCAP, and Exchange developments, low-income households comprised entirely of full-time students must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. For Bond Developments, if the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). For HOME, HOME Match and TCAP RF, and HOME-ARP Developments, an individual does not qualify as a low income or very low income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.

(3) The types of Developments described in subparagraphs (A) - (D) of this paragraph are required to recertify annually the income of each low-income household using a Department approved Income Certification form and documentation to support the Income Certification (see subsection (a)(1) - (2) of this section):

(A) Mixed income Housing Tax Credit, TCAP and Exchange projects (as defined by line 8(b) of IRS Form(s) 8609 and accompanying statements, if any) that have not completed the 15 year Compliance Period.

(B) All Bond Developments with less than 100% of the units set aside for households with an income less than 50% or 60% of area median income.

(C) THTF Developments with Market Rate units. However, THTF Developments with other Department administered programs will comply with the requirements of the other program.

(D) HOME, TCAP RF, ~~and~~ NHTF, and HOME-ARP Developments. Refer to subsection (c) of this section.

(c) Ongoing tenant file requirements for HOME, TCAP RF, ~~and~~ NHTF, and HOME-ARP Developments:

(1) HOME, TCAP RF, ~~and~~ NHTF, and HOME-ARP Developments must complete a recertification with verifications of each assisted Unit every sixth year of the Development's Affordability Period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME, TCAP RF, ~~and~~ NHTF, and HOME-ARP Development affordability Period is the effective date in the HOME, TCAP RF, ~~and~~ NHTF, and HOME-ARP LURA. For example, a HOME Development with a LURA effective date of May 2011, will have the years of the affordability determined in Example ~~612~~(1):

(A) Year 1: May 15, 2011 - May 14, 2012;

(B) Year 2: May 15, 2012 - May 14, 2013;

(C) Year 3: May 15, 2013 - May 14, 2014;

(D) Year 4: May 15, 2014 - May 14, 2015;

(E) Year 5: May 15, 2015 - May 14, 2016;

(F) Year 6: May 15, 2016 - May 14, 2017;

(G) Year 7: May 15, 2017 - May 14, 2018;

(H) Year 8: May 15, 2018 - May 14, 2019;

(I) Year 9: May 15, 2019 - May 14, 2020;

(J) Year 10: May 15, 2020 - May 14, 2021;

(K) Year 11: May 15, 2021 - May 14, 2022; and

(L) Year 12: May 15, 2022 - May 14, 2023.

(2) In the scenario described in paragraph (1) of this subsection, all households in HOME, TCAP RF, ~~and~~ NHTF, and HOME-ARP Units must be recertified with source documentation during the sixth and twelfth years or between May 15, 2016, to May 14, 2017, and between May 15, 2022, and May 14, 2023.

(3) In the intervening years the Development must collect a self-certification by the within 120 days before the anniversary of the effective date of the original Income Certification from each household that is assisted with HOME, TCAP RF, ~~and~~ NHTF, and HOME-ARP funds. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's Income Certification form will be

accepted. If the household reports on their self certification that their annual income exceeds the current 80% applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then an annual income recertification with verifications is required.

(d) Tenant File requirements for HOME-ARP Qualified Populations units. Files for households assisted under the HOME-ARP program as Qualified Population must document evidence that the households meet the definition of:

(1) Homeless as defined in 24 CFR §91.5;

(2) At-risk of homelessness as defined in 24 CFR §91.5;

(3) Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking, as defined in CPD Notice 21-10;

(4) Other Families Requiring Services or Housing Assistance to Prevent Homelessness, which are households who have previously been qualified as homeless, are currently housed due to temporary, or emergency assistance, including financial assistance, services, temporary rental assistance or some type of other assistance to allow the household to be housed, and who need additional housing assistance or supportive services to avoid a return to homelessness;

(5) At Greatest Risk of Housing Instability as cost burdened, which are households who have an annual income that is less than or equal to 30% of the area median income, as determined by HUD and is experiencing severe cost burden (i.e. is paying more than 50% of monthly household income toward housing costs.); or

(6) At Greatest Risk of Housing Instability, which meets the definition of at-risk of homelessness as defined in 24 CFR §91.5, but with an income up to 50% AMI.

(e) Tenant File requirements for Section 811 PRA Units. Files for households assisted under the Section 811 program must document the household's eligibility for the program, the deductions for which the household qualifies and the following HUD forms (or any subsequent HUD form number):

(1) Section 811 Project Rental Assistance Application;

(2) Verification of disability; ~~HUD 90102~~;

(3) House Rules;

(4) Move in/~~move out~~ inspection form ~~HUD 90106~~, and of TDHCA Section 811 Waiver of Move-in (as applicable);

(5) Tenant acknowledgement of the Fact Sheet "How your rent is determined";

(6) Tenant acknowledgement of Resident Rights and Responsibilities;

(7) Tenant acknowledgement of EIV and You Brochure;

(8) Verification of Age;

(9) Verification of Social Security number;

- (10) Screening for drug abuse and other criminal activity;
- (11) 811 Tenant Selection Plan;
- (12) Supplement to Application for Federally Assisted Housing: Form 92006;
- (13) Annual Recertification Initial Notice;
- (14) Annual Recertification First Reminder Notice;
- (15) Annual Recertification Second Reminder Notice;
- (16) Annual Recertification Third Reminder Notice;
- (17) Race and Ethnic Data Reporting form: HUD 27061-H;
- (18) HUD 9887 and HUD 9887-A;
- (19) Annual Unit inspection;
- (20) Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures: HUD form 50059; and
- (21) HUD Model lease 922336-PRA.

§10.613 Lease Requirements

(a) Eviction and/or termination of a lease. HTC, TCAP, and Exchange Developments must specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action. For nonpayment of rent, a thirty (30) day written notice is required.

(b) HOME, TCAP RF, NHTF, ~~and~~ NSP, and HOME-ARP Developments are prohibited from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for Transitional Housing (if applicable), or for other good cause. It must be specifically stated in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253 and 24 CFR §93.303). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253 or 24 CFR §93.303, as applicable. To terminate or refuse to renew tenancy in HOME, TCAP RF, ~~and~~ NSP, and HOME-ARP Developments, the Owner must serve written notice to the tenant specifying the grounds for the action at least 30 days before the termination of tenancy. For HOME-ARP, Owners may not terminate the tenancy or refuse to renew the lease of the Qualifying Household in any Unit that is supported by capitalized operating costs because of the household's inability to pay rent of more than 30 percent of the qualifying household's income toward rent during the longer of the federal affordability period or the time period identified in the Contract.

(c) In accordance with the Violence Against Women Act, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking against the documented victim of such actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as a serious or repeated violation of a lease or good cause for termination of tenancy. The Department does not determine if an Owner has good cause or if a resident has violated the lease terms for other reasons. Challenges for evictions or terminations of tenancy must be made by a court of competent jurisdiction or

an agreement of the parties (including an agreement made in arbitration), and the Department will rely on that determination.

(d) A Development must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of HTC Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) For HOME, TCAP, TCAP RF, NHTF, 811 PRA, ~~and NSP~~, and HOME-ARP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that all households at HOME, TCAP, TCAP RF, NHTF, ~~and NSP~~, HOME-ARP -Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355, 24 CFR §93.361 and §570.487(c)). The addendum and disclosure are not required if all lead has been certified to have been cleared from the Development in accordance with 24 CFR §35.130, and the Owner has the required certification in its on-site records.

(g) An Owner may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the Unit or other affiliated individual as defined in the VAWA 2013.

(h) All NHTF, TCAP RF, NSP, ~~and HOME~~, and HOME-ARP Developments for which the contract is executed on or after December 16, 2016, must use the Department created VAWA lease addendum which provides the ability for the tenant to terminate the lease without penalty if the Department determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e). 811 PRA Units are prohibited from using the expired 2005 VAWA lease addendum. After OMB approval of a VAWA lease addendum, all 811 PRA households must have a valid and executed VAWA lease addendum. For the 811 PRA program certain addenda for the HUD model lease may be required such as Lead Based Paint Disclosure form, house rules, and pet rules. No other attachments to the lease are permissible without approval from the Department's 811 PRA staff.

(i) Leasing of HOME, HOME Match, TCAP RF, or NHTF Units to an organization that, in turn, rents those Units to individuals is not permissible for Developments with contracts dated on or after August 23, 2013. Leases must be between the Development and an eligible household. NSP and HOME-ARP Developments may only utilize Master Leases, if specifically allowed in the Development's LURA.

(j) Housing Tax Credit Units leased to an organization through a supportive housing program where the owner receives a rental payment for the unit regardless of physical occupancy will be found out of compliance if the Unit remains vacant for over 60 days. The Unit will be found out of compliance under the Event of Noncompliance "Violation of the Unit Vacancy Rule."

(k) It is a Development Owner's responsibility at all times to know what it has agreed to provide by way of common amenities, Unit amenities, and services.

(l) A Development Owner shall post in a common area of the leasing office a copy and provide each household, during the application process and upon a subsequent change to the items described in

paragraph (2) of this subsection, the brochure made available by the Department, A Tenant Rights and Resources Guide, which includes:

- (1) Information about Fair Housing and tenant choice;
 - (2) Information regarding common amenities, Unit amenities, and services; and
 - (3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure.
 - (4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received.
- (m) For Section 811 PRA Units, Owners must use the HUD Model lease, HUD form 92236-PRA.

§10.614 Utility Allowances

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a Utility Allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a Utility Allowance if it is not calculated in accordance with this section. Owners are required to comply with the provisions of this section as well as any existing federal or state program guidance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms used in this section herein have the meanings assigned in Chapters 1, 2, 10, 11, and 12 of this title.

(1) Building Type. The HUD Office of Public and Indian Housing (PIH) characterizes building and unit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11608.pdf (or successor Uniform Resource Locator (URL)) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition: <http://www.powertochoose.org/> (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service directly with the Utility Provider. If the Utility Provider is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved.

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). The cost for the actual unit of measure for the utility (e.g., cost per kilowatt hour for electricity);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (e.g., Customer Charge); ~~and~~

(C) Delivery Charges. The fees associated with servicing and delivering electricity to the meter from the generation source as listed on the Transmission and Distribution Utility (TDU) website; and,

~~(D)~~ Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accounts and can

be found <http://comptroller.texas.gov/> (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain documentation directly from the Utility Provider.

(4) Multifamily Direct Loan (MFDL). Funds provided through the ~~HOME Program (HOME), Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), Repayments from the Tax Credit Assistance Program (TCAP RF), HOME-ARP,~~ or other program available through the Department, local political subdivision, or administrating agency for multifamily development that require a Utility Allowance. MFDLs may also include deferred forgivable loans or other similar direct funding, regardless if it is required to be repaid. Housing Tax Credits, Tax Exempt Bonds, and Project Based Vouchers are not MFDLs.

(5) Renewable Source. Energy produced from energy property described in IRC §48 or IRC §45(d)(1) through (4), (6), (9), or (11). The manner in which a resident is billed is limited to the rate at which the local Utility Provider would have charged the residents for the utility if that entity had provided it to them, and as may be further limited by the Texas Utilities Code or by regulation.

(6) Submetered Utility. A utility purchased from or through a local Utility Provider by the building Owner where the resident is billed directly by Owner of the building or to a third party billing company and the utility is:

(A) Based on the residents' actual consumption of that utility and not an allocation method or Ratio Utility Billing System (RUBS); and

(B) The rate at which the utility is billed does not exceed the rate incurred by the building Owner for that utility.

(7) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet. A utility allowance is considered implemented once the Unit Status Report is updated and rents are restricted.

(A) For HTC, TCAP, Exchange buildings, Bonds, and THTF include:

(i) Utilities paid by the resident directly to the Utility Provider;

(ii) Submetered Utilities; and

(iii) Renewable Source Utilities.

(B) For a Development with an MFDL, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.

(8) Utility Provider. The company that provides residential utility service (e.g., electric, gas, water, wastewater, and/or trash) to the buildings.

(c) Methods. The following options are available to establish a Utility Allowance for all programs except most Developments funded with MFDL funds, which are addressed in subsection (d) of this section. HOME-ARP may use methods in subsection (c) or subsection (d), but cannot combine two methods in one building.

(1) Rural Housing Services (RHS) buildings or buildings with RHS assisted residents. The applicable Utility Allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted residents.

(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any resident in the building receives RHS rental assistance payments, and the rents and the Utility Allowances of the building are regulated by HUD (HUD-regulated building), the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service (IRS), the Department considers Developments awarded an MFDL (e.g., HOME) to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority (PHA). The Utility Allowance established by the applicable PHA for the Housing Choice Voucher Program. The Department will utilize the Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example 614(1): The applicable PHA publishes a separate Utility Allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consists of 20 buildings, 10 of which are Apartments (5+ units) and the other 10 buildings are Duplexes. The Owner must use the correct schedule for each Building Type.

(ii) In the event the PHA publishes a Utility Allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the Utility Allowance if the resident is responsible for that utility.

(iv) If the individual components of a Utility Allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example ~~614~~(2): Electric cooking is \$8.63, Electric Heating is \$5.27, Other Electric is \$24.39, Water and Sewer is \$15. The Utility Allowance in this example is \$54.00. If the PHA schedule reflects a rounded amount, then the PHA method of rounding should be used.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the Utility Allowance remains the applicable PHA Utility Allowance established by the PHA from which the household's voucher is received.

(vi) If the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a Utility Allowance schedule for the Housing Choice Voucher Program, Owners must select an alternative methodology, unless the building(s) is located in the published Housing Choice Voucher service area of:

(I) A Council of Government created under Texas Local Government Code, Chapter 303, that operates a Housing Choice Voucher Program;

(II) The Department's Housing Choice Voucher Program; or

(III) Another PHA which publishes a separate utility allowance schedule specific to the Development's location.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at <http://www.huduser.gov/portal/resources/utilallowance.html> (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates.

(i) The allowance must be calculated using the MS Excel version available at <http://www.huduser.org/portal/resources/utilmodel.html> (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the PHA zip code for the ~~local PHA to the~~ Development is not listed in "Location" tab of the workbook, the Department will ~~default to use~~ the PHA code for the PHA that is closest in distance to the Development using online mapping tools (e.g., ~~MapQuest~~ Google Maps). The Department will obtain the PHA codes from https://www.hud.gov/sites/dfiles/PIH/documents/PHA>Contact_Report_TX.pdf (or successor Uniform Resource Locator (URL)).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review.

(I) In the event the allowance is being calculated for an application of Department funding (e.g., 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes.

(II) At lease up, the owner may use the utility allowance taking into consideration the green discount if they obtain written documentation from a qualified professional (e.g., a qualified energy efficiency consultant) indicating that the units and buildings will meet the qualifications for the Green Discount within six months of the placed in service date or for MFDL within six months of the construction completion date.

(iv) Do not take into consideration any costs (e.g., penalty) or credits that a consumer would incur because of their actual usage. Example 614(3): The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of \$40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less ~~thattan~~ 2000 kWh. Example 614(4): A monthly minimum usage fee of \$9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types of costs or credits.

(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer. The license of the engineer must be submitted along with the model. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, characteristics of building location, and available historical data. Component Charges used must be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates; and

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has

the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least five Continuously Occupied Units of each Unit Type or 20% of each Unit Type, whichever is greater. If there are less than five Units of any Unit Type, data for 100% of the Unit Type must be provided; and

(ii) Upload the information in subclauses (I) - (IV) of this clause to the Development's CMTS account no later than the beginning of the 90 day period after which the Owner intends to implement the allowance, reflecting data no older than 60 days prior to the 90 day implementation period described in subsection (f)(3) of this section related to Effective Dates.

(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (e.g., actual kilowatt usage for electricity) for each month of the 12 month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;

(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(IV) Documentation of the current Utility Allowance used by the Development.

(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the Utility Allowance for each bedroom size using the guidelines described in subclauses (I) - (V) of this clause;

(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;

(II) If more than 12 months of data is provided for any Unit, only the data for the most current 12 will be averaged;

(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last 12 months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(iv) The Department will complete its evaluation and calculation within 45 days of receipt of all the information requested in clause (ii) of this subparagraph;

(d) In accordance with 24 CFR §§92.252 and 93.302, for an MFDL in which the Department is the funding source, the Utility Allowance will be established in the following manner:

(1) For Developments that, as a result of funding, must calculate the Utility Allowance under HUD Multifamily Notice H-2015-4, as revised from time to time, the applicable Utility Allowance for all rent restricted Units in the building is the applicable Utility Allowance calculated under that Notice. No other utility method described in this section can be used.

(2) Other Buildings. The Utility Allowance may be initiated by the Owner using the methodologies described in subsection (c)(3)(B), (C), (D), or (E) of this section related to Methods.

(A) Buildings for which the only source of MFDL funding is HOME-ARP and which contain no HOME-Match Units may calculate the Utility Allowance using the methodology described in subsection (c)(3)(A).

(B) The methodology must be annually reviewed and approved by the Department.

(3) If a request is not received by October 1st, the Department will calculate the Utility Allowance using the HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Entrance Interview Questionnaires submitted with prior ~~onsite-monitoring~~ reviews; or

(C) The owner may be contacted and required to complete the Utility Allowance Questionnaire. In such case, a five day period will be provided to return the completed questionnaire.

(D) Utilities will be evaluated in the following manner:

(i) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(ii) For deregulated utilities:

(I) The Department will use the Power to Choose website and search available Utility Providers by ZIP code;

(II) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans; and

(III) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be entered into the Model.

(E) The Department will notify the Owner contact in CMTS of the new allowance and, if requested, provide the backup for how the allowance was calculated. The owner will be provided a five day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the residents will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five day period, the owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(F) The allowance must be implemented for rent due in all program units thirty days after the Department notifies the Owner of the allowance.

(4) HTC Buildings in which there are units under an MFDL program are considered HUD-Regulated buildings

and the applicable Utility Allowance for all rent restricted Units in the building is the Utility Allowance calculated under the MFDL program. If the Department is the awarding entity, No other utility method described in this section can be used by HUD-regulated buildings. If the Department is not the awarding jurisdiction, Owners are required to obtain, annually, the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive. In such an event, provided that, sufficient evidence of due diligence is demonstrated, the Department, in its sole discretion, may allow for the use of the methods described in subsection (c)(3)~~(A)~~, (B), (C), (D) or ~~(E)~~ of this section related to Methods to calculate and establish its utility allowance.

(e) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (e.g., base charges, cost per unit of measure, taxes) Owners should obtain documentation directly from the Utility Provider and/or Regulating State Agency. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is billing residents through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(f) Changes in the Utility Allowance. An Owner may not change Utility Allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example 614(5): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year eight, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation. Developments may not start or stop charging residents for a utility during a lease term.

(1) The Department will review all requests, with the exception of the methodology prescribed in subsection (c)(3)(E) of this section related to Methods, within 90 days of the receipt of the request.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(6): The Owner has chosen to calculate the electric portion of the Utility Allowance using the written local estimate. The annual letter is dated July 5, ~~2022~~2021, and the notice to the residents was posted in the leasing office on July 5, ~~2022~~2021. However, the Owner failed to submit the request to the Department for review until September 15, ~~2022~~2021. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the owner until approved by the Department.

(3) Effective dates. If the Owner uses the methodology ies as described in subsection (c)(3)(A) of this section related to Methods, no posting is required, and any changes to the allowance can be implemented immediately, but must be implemented for rent due at least 90 days after the change. For methodologies as described in subsection (c)(3)(B), (C), (D) and (E) of this section related to Methods, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the 90 day period in which the Owner intends to implement the Utility Allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue.

(g) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due 90 days after the PHA ~~releases an updated scheduled~~ published effective date.

(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the Utility Allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved Utility Allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request. With the exception of MFDL developments, if an Owner fails to submit for annual review during the calendar year, the Development's Utility Allowance will default to the applicable PHA allowance. If the Development is located in an area that does not have a PHA, the Development fails to have a properly calculated Utility Allowance. The Utility Allowance for MFDL Developments that fail to submit for annual review will be calculated pursuant to subsection (d).

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. With the exception of MFDL developments, if an Owner fails to submit for annual review during the calendar year, the Development's Utility Allowance will default to the applicable PHA allowance. If the Development is located in an area that does not have a PHA, the Development fails to have a properly calculated Utility Allowance. The Utility Allowance for MFDL Developments that fail to submit for annual review will be calculated using the HUD Utility Model Schedule.

(h) For Owners participating in the Department's Section 811 Project Rental Assistance (PRA) Program, the Department will establish the Utility Allowance for all 811 units. On an annual basis, the Department will calculate a Utility Allowance and provide the Owner with a property-specific rent schedule containing the approved Utility Allowance. The allowance listed on the rent schedule only applies to 811 PRA units, not the entire building, and is the only allowance approved for use on 811 PRA units.

(i) Combining Methods. In general, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (e.g., electric, gas). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance. RHS and certain HUD-Regulated buildings (e.g., buildings with ~~HOME/TCAP RFMFDL~~ funds) are not allowed to combine methodologies.

(j) The Owner shall maintain and make available for inspection by the resident all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the

allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the resident at the convenience of both the Owner and resident.

(k) Utility Allowances for Applications.

(1) If the application includes RHS assisted buildings or tenants, the utility allowance is prescribed by the RHS program. No other method is allowed.

(2) If the application includes HUD-Regulated buildings for HUD programs other than an MFDL program the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method is allowed.

(3) If the application includes MFDL funds from the Department, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(B), (C), (D) or (E) of this section related to Methods. Applicants must submit their utility allowance to the Compliance Division prior to full application submission. In the event that the application has an MFDL from the Department, and receives federal funds from a unit of local government, the Department will require the use of the allowance approved by the Department. HOME-ARP may use subsection (c)(3)(A).

(4) If the application includes federal funds from a unit of local government but no MFDL from the Department, Applicants are required to request in writing the Utility Allowance from the awarding jurisdiction. If the awarding jurisdiction does not respond or requests the Department to calculate the allowance, the Department will establish the initial Utility Allowance in accordance with subsection (d)(3) of this section.

(5) For all other applications, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(A), (B), (C), (D), or (E) of this section related to Methods. If using the method described in subsection (c)(3)(B), (C), (D), or (E), applicants must submit their utility allowance to the Compliance Division prior to full application submission.

(A) Upon request, the Compliance Division will calculate or review an allowance for application. The request must be submitted to the Compliance Division no later than within 21 days, but no earlier than 90 days, from when the application is due.

(B) Example 614(8 7): An application for a 9% HTC is due March 1, 202217. The applicant would like Department approval to use an alternative method by February 15, 202217. The request must be submitted to the Compliance Division no later than January 25, 202217, three weeks before February 15, 202217.

(C) Example 614(9 8): An Applicant intends to submit an application for a 4% HTC with Tax Exempt Bonds on August 11, 202217, and would like to use an alternative method. Because approval is needed prior to application submission, the request can be submitted no earlier than May 13, 202217, (90 days prior to August 11, 202217) and no later than July 21, 202217, (21 days prior to August 11, 202217).

(D) Any requests for new resources (either additional funds or tax credits) on a Development with an existing Department LURA must use the method that is in effect on the existing Development. If the Owner wishes to change or if for an MFDL application is required to change the methods for the purposes of the application, a request for the existing Development must first be submitted to the Compliance Division for approval.

(6) All Utility Allowance requests related to applications of funding must:

(A) Be submitted directly to UA-Application@tdhca.state.tx.us ~~ua_application@tdhca.state.tx.us~~. Requests not submitted to this email address will not be recognized.

(B) Include the "Utility Allowance Questionnaire for Applications" along with all required back up based on the method. If back-up is not submitted the Utility Allowance will be calculated using the HUD Utility Schedule Model as described in subsection (d)(3).

(I) If Owners want to change to a utility allowance other than what was used for underwriting the Owner must submit Utility Allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. The Owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year of the Credit Period (if applicable), whichever is earlier. Once a request to change the utility allowance is approved or implemented, the utility allowance used at underwriting is no longer valid.

(m) The Department reserves the right to outsource to a third party the review and approval of all or any Utility Allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(n) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field and "Utility Allowance" as the TDHCA Contact. The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.

§10.615 Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments

(a) Under the Code, HTC Development Owners may elect 20% of the Units restricted at the 50% income and rent limits (20/50), 40% of the Units restricted at the 60% income and rent limits (40/60) or the average income minimum set aside. Many Developments have additional income and rent requirements (e.g., 30%, 40% and 50%) that are lower than or in addition to the election requirement. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's LURA.

(b) A Development with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted Units. The Development's waitlist policy must inform applicants and current residents of the availability of lower rent Units and the process for renting a lower rent Unit. Unless otherwise approved at Application, underwriting, and cost certification, all Unit sizes must be available at the lower rent limits. The waitlist policy for Developments with lower rent restricted Units must address how the waiting list for their lower rent restricted Units will be managed. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.

(c) The Department will examine the actual gross rent (tenant portion of rent plus utility allowance plus any mandatory fees) and income levels of all households to determine if the additional income and rent requirements of the LURA are met. Until and unless the Internal Revenue Service or Treasury Department issue conflicting guidance, the Department will examine the actual gross rent and income of all households to determine if Developments that elected the average income minimum set aside have met the federal requirements and any lower additional occupancy restriction reflected in the Development's LURA.

(d) Until and unless the Internal Revenue Service or the Treasury Department issue conflicting or additional guidance, the Department will monitor the Available Unit Rule in the following manner for Developments that elected the average income minimum set aside:

(1) If the income of the household who, at the last certification, had an income and rent less than the 60% limits exceeds 140% of the 60% limit, the household must be redesignated as over income.

(2) If the income of a household with an income or rent above the 60% level and less than or equal to the 70% limits exceeds 140% of the 70% limit, the household must be designated as over income.

(3) If the income of a household with an income or rent above the 70% level and less than or equal to the 80% limits exceeds 140% of the 80% limit, the household must be designated as over income.

(4) Owners are not required to terminate the tenancy of over income households. When the Unit occupied by an over income household is vacated, it must be reoccupied by a household with an income and rent level equal to or less than the rent level of the household that went over income. In addition, the Unit must be reoccupied by a household that restores the low income average of the project to 60% or less.

(e) Units at 80% area median income and rent on HTC Developments. In certain years, the Department's Qualified Allocation Plan provided incentives to lease 10% of the Development's Market Rate Units to households at 80% income and rents. This section provides guidance for implementation. If the LURA requires 10% of the Market Rate Units be leased to households at 80% income and rent limits, the Owner must certify the 80% households at the time of move in only. Recertifications will not be required. Student rules do not apply to Units occupied by 80% households. Noncompliance with the requirement to lease to 80% households is not reportable to the IRS on IRS Form 8823 but will be cited as noncompliance under the event "Development failed to meet additional state required rent and occupancy restrictions."

(f) The Department does not require Developments to lease more Units under the additional occupancy restrictions than established in their LURA. However, if a Development inadvertently designates more households than required under the additional rent and occupancy restrictions, they may only decrease to the minimum number through attrition and new move-ins, not by removing designations.

§10.616 Household Unit Transfer Requirements for All Programs

(a) The requirements and restrictions regarding household transfers for HTC, Exchange, and TCAP Developments are based on whether the tax credit project is 100% low-income or mixed income and if the Owner elected to treat buildings in the project as part of a multiple building project. To determine if a Development is a multiple building project, refer to the election on IRS Form(s) 8609 line 8(b) and accompanying statements (if any). If IRS Form(s) 8609 have not yet been issued by the Department and filed by the Owner, each building is its own project. The Department may allow Owners to indicate their intended 8(b) elections and will monitor accordingly. Failure to file the same elections with the IRS may result in noncompliance, additional monitoring, an additional monitoring fee and findings of noncompliance.

(1) 100% low-income multiple building projects: Households may transfer to any Unit in a 100% low-income multiple building project and retain their program designation. The household does not need to be and should not be certified at the time of transfer. The move in date remains the date the household was first designated under the program.

(2) Each building is its own project (100% low-income and mixed income projects). Developments that made the 20/50 or 40/60 election: at the time of transfer, the household must be certified and have a

current annual income less than the income limit established by the minimum set aside the Owner selected. Developments that elected the average income test under IRC §42(g): the household must be certified and their current designation averaged together with the designations of the other households in the project must be equal to or less than the percentage represented at the time of Application.

(3) Mixed income multiple building projects: Low-income households retain their program designation when they transfer to any Unit in a multiple building project if at the last annual certification their income was less than 140% of area median income level set by the minimum set aside.

(b) Household transfers for Bond, THTF, NHTF, HOME, TCAP RF, HOME Match and NSP, and HOME-ARP with floating Units. Households may transfer to any Unit within the Development. A certification is not required at the time of transfer. If the household transfers to a different Unit Type, the Development must maintain the Unit Type dispersion as reflected in its LURA, by re-leasing the vacated Unit to a program eligible household. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved into the Development. If the Development is layered with Housing Tax Credits, use the transfer guidelines described in subsection (a) of this section (relating to Household Unit Transfer Requirements).

(c) Household transfers for NHTF, HOME, TCAP RF, HOME Match, and NSP, and HOME-ARP with fixed Units. Households may transfer to any Unit and do not need to be certified at the time of the transfer. If the household transfers to a Unit that is not fixed, the Development must re-lease the vacated Unit to a program eligible household. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved into the Development. If the Development is layered with Housing Tax Credits, use the transfer guidelines described in subsection (a) of this section (relating to Household Unit Transfer Requirements).

(d) Household Transfers in the Same Building for the HTC Programs. A Household may transfer to a new Unit within the same building (for the HTC program within the meaning of IRS Notice 88-91). The Unit designations will swap status.

§10.617 Affirmative Marketing Requirements

Affirmative Marketing Requirements are a requirement of the Department on monitored Developments as provided for in more specificity at §10.801 of this chapter (relating to Affirmative Marketing Requirements).

§10.618 ~~Onsite~~ Monitoring and Inspections

(a) The Department may perform an onsite monitoring review, a mail in desk review and physical inspection of any Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA, whichever is later. The Development Owner shall permit the Department access to the Development premises and records.

(b) The Department will perform ~~onsite~~ monitoring reviews of each low-income Development. The Department will conduct:

(1) The first review of HTC Developments by the end of the second calendar year following the year the last building in the Development is placed in service;

(2) The first review of all Developments, other than those described in paragraph (1) of this subsection, as leasing commences;

(3) During the Federal Compliance Period subsequent reviews will be conducted at least once every three years;

(4) After the Federal Compliance Period, Developments will be monitored in accordance with §10.623 of this chapter (relating to Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period);

(5) A physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units;

(6) Limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least 48 hours notice will be provided); and

(7) Reviews, meetings, and other appropriate activity in response to complaints or investigations.

(c) The Department will perform onsite file reviews or a mail in desk review and monitor:

(1) Low-income resident files in each Development, and review the Income Certifications;

(2) The documentation the Development Owner has received to support the certifications;

(3) The rent records; and

(4) Any additional aspects of the Development or its operation that the Department deems necessary or appropriate.

(d) The LURA for most HOME, NSP, TCAP RF, ~~and NHTF~~, and HOME-ARP Developments specifies a required Unit Mix and income level. During ~~onsite-the~~ monitoring ~~reviews visits~~ it will be determined if the minimum number of affordable Units and exact square footage has been provided. Failure to provide the exact square footage listed in the LURA will be cited as "Failure to provide correct square footage". Failure to provide the required number of Units required by the LURA will be cited as "Household income above income limit upon initial occupancy".

(1) Example ~~612~~(2). A TCAP RF LURA requires eight low-income units at 60% AMI with the following Unit mix:

(A) Three one bedroom, one bath units with a Net Rentable Area (NRA) of 770 sq ft;

(B) One two bedroom one bath units with a NRA of 900 sq ft; and

(C) Four three bedroom two bath units with a NRA of 1000 sq ft.

(2) If during the onsite-monitoring review the Development has eight units designated as TCAP RF, but is not exactly the Units and square footage mix shown in subparagraphs (A) - (C) of this paragraph in Example 612(2) (even if the actual square footage provided is greater) the noncompliance "Failure to provide correct square footage" will be cited.

(e) At times other than onsite-monitoring reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low-Income Unit and may require a Development Owner to submit copies of the tenant files, including copies of the Income Certification, the documentation the Development Owner has received to support that certification, and

the rent record for any low-income tenant.

(f) The Department will select the Low-Income Units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice, as defined in Treasury Regulation 1.42-5, to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious alleged or suspected noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits and/or physical inspections.

(g) In order to prepare for monitoring reviews and physical inspections and to reduce the amount of time spent onsite, Department staff must review certain requested documentation described in the ~~onsite-notification-announcement~~. Owners are required to submit documentation by the required deadline indicated in the ~~onsite-notification-announcement~~. Failure to submit required documentation will result in a finding of noncompliance.

§10.619 Monitoring for Social Services

(a) If a Development's LURA requires the provision of social services, the Department will confirm this requirement is being met in accordance with the LURA. Owners are required to maintain sufficient documentation to evidence that services are actually being provided. Documentation will be reviewed during onsite-visits-monitoring reviews beginning with the first onsite-monitoring review. Planned services with specific dates may suffice as evidence of compliance during the first onsite-monitoring review. Evidence of services must be submitted to the Department upon request. The first onsite-visit monitoring review Example 619(1): The Owner's LURA requires provision of onsite daycare services. The Owner maintains daily sign in sheets to demonstrate attendance and keeps a roster of the households that are regularly participating in the program. The Owner also keeps copies of all newsletters and fliers mailed out to the Development tenants that reference daycare services. Example 619(2): The Owner's LURA requires a monetary amount to be expended on a monthly basis for supportive services. The Owner maintains a copy of an agreement with a Supportive Service provider and documents the amount expended as evidence that this requirement is being met.

(b) A substantive modification of the scope of tenant services requires Board approval. Such requests must comply with procedures in §10.405 of this chapter (relating to Amendments and Extensions). It is not necessary to obtain prior written approval to change the provider of services unless the scope of services is being changed. Failure to comply with the requirements of this section shall result in a finding of noncompliance.

(c) If the Development's LURA requires a monthly expenditure for the provision of services, the Department will monitor to confirm compliance. Includable costs to support the expenditure include those costs directly related to providing the service(s). Such costs can include, but are not limited to, the cost of contracting the services with a qualified provider, cost of notification of such services (for example, a monthly newsletter), and other costs that can be documented and would only be incurred as a result of the service. An Owner cannot include any costs related to the normal expense of maintaining or operating a Development, utility bills of any kind, in-kind contributions or services, cleaning or contracted janitorial services, office supplies, cost of copier or fax, costs incurred for maintenance of machinery, or volunteer hours. This list is not inclusive, but any other costs identified by the Owner shall be reviewed for consistency with this subsection.

§10.621 Property Condition Standards

(a) All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's Uniform Physical Condition Standards (UPCS) to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes.

(b) HTC Development Owners are required by Treasury Regulation §1.42-5 to report (through the Annual Owner's Compliance Report) any local health, safety, or building code violations. HTC Developments that fail to comply with local codes shall be reported to the IRS.

(c) The Department is required to report any HTC Development that fails to comply with any requirements of the UPCS or local codes at any time during the compliance period to the IRS on IRS Form 8823. Accordingly, the Department will submit IRS Form 8823 for any UPCS violation.

(d) Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that will allow the Department to reasonably determine when the repair was made and whether the repair sufficiently corrected the violation(s) of UPCS standards. Acceptable documentation includes: copies of work orders (listing the deficiency, action taken or repairs made to correct the deficiency, date of corrective action, and signature of the person responsible for the correction), invoices (from vendors, etc.), or other proof of correction. Photographs are not required but may be submitted if labeled and only in support of a work order or invoice. The Department will determine if submitted materials satisfactorily document correction of noncompliance.

(e) Selection of Units for Inspection.

(1) Vacant Units will not be inspected (alternate Units will be selected) if a Unit has been vacant for fewer than 30 days.

(2) Units vacant for more than 30 days are assumed to be ready for occupancy and may be inspected. No deficiencies will be cited for inspectable items that require utility service, if utilities are turned off and the inspectable item is present and appears to be in working order.

(f) The Department will consider a request for review of a UPCS score using a process similar to the process established by the U. S. Department of Housing and Urban Development Real Estate Assessment Center. The request must be submitted in writing within 45 calendar days of receiving the initial UPCS inspection report and score.

(g) Examples of items that can be adjusted include, but are not limited to:

(1) Building Data Errors--The inspection includes the wrong building or a building that is not owned by the Development.

(2) Unit Count Errors--The total number of units considered in scoring is incorrect as reported at the time of the inspection.

(3) Non-Existent Deficiency Errors--The inspection cites a deficiency that did not exist at the time of the inspection.

(4) Local Conditions and Exceptions--Circumstances include inconsistencies between local code requirements and the UPCS inspection protocol, such as conditions permitted by local variance or license

(e.g., child guards allowed on sleeping room windows by local building codes) or preexisting physical features that do not conform to or are inconsistent with the Department's physical condition protocol.

(5) Ownership Issues--Items that were captured and scored during the inspection that are not owned and/or not the responsibility of the Development. Examples include sidewalks, roads, fences, retaining walls, and mailboxes owned and maintained by adjoining properties or the city/county/state and resident-owned appliances that are not maintained by the Owner.

(6) Modernization Work In Progress--Developments undergoing extensive modernization work in progress, underway at the time of the physical inspection, may qualify for an adjustment. All elements of the unit that are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to the Department's physical inspection protocol without adjustment. Any request for a Database adjustment for modernization work in progress must include proof the work was contracted before any notice of inspection was issued by the Department.

(h) Examples of items that cannot be adjusted include, but are not limited to:

(1) Disagreements over the severity of a defect, such as deficiencies rated Level 3 that the Owner believes should be rated Level 1 or 2;

(2) Deficiencies that were repaired or corrected during or after the inspection; or

(3) Deficiencies recorded with no associated point loss (for example, inoperable smoke detectors) or deficiencies for survey purposes only (for example, fair housing accessibility).

(i) All Exigent and Fire Safety (E&FS or EH&S) deficiencies must be corrected immediately. Project Owner's Certification That All Exigent and Fire Safety Deficiencies Have Been Corrected must be completed and uploaded to CMTS within 72 hours (three days).

§10.622 Special Rules Regarding Rents and Rent Limit Violations

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that an HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside.

(c) Rent Violations of the maximum allowable limit due to application fees, ~~or application deposits not promptly converted into a security deposit under the HTC program.~~ Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to \$5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. Example 622(2): A Development's out of pocket cost for processing an application is \$17.00 per adult. The property may charge \$22.50 for the first adult and \$17.00 for each additional adult.

(2) Documentation of Development costs for application processing or screening fees must be made available during ~~onsite visits~~ monitoring reviews or upon request. The Department will review application fee documentation during ~~onsite~~ monitoring reviews ~~visits~~. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. Developments that pay a flat monthly fee must determine the appropriate application fee at least annually based on the prior year's activity. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee or collected impermissible deposits, the noncompliance will be reported to the IRS on Form 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, Owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected back in compliance on January 1st of the year after they were overcharged the application fee or an impermissible deposit.

(4) Throughout the Affordability Period, Owners may not charge a deposit or any type of fee (other than an application fee) for a household to be placed on a waiting list.

(d) Rent or Utility Allowance Violations on ~~Non-HTC Developments~~ MFDL programs, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees and any rental assistance (unless otherwise described in the LURA) cannot exceed the designated applicable limit published by the HTC Developments after the Compliance Period, and foreclosed HTC properties for three years after foreclosure. If Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit (not a credit to amounts owed the Development) to the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household's account. In the absence of a household's election, a full refund check must be presented to the household within thirty days.

(e) Rent or Utility Allowance Violations on HTC Developments after the Compliance Period, HTC properties for three years after the LURA is released as a result of a foreclosure or deed in lieu of foreclosure (as applicable), BOND, and THTF the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household within thirty days.

(f) ~~e~~ Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the ~~tenant~~ household. If the violation effects multiple households, the Owner may set up a single account with all of the unclaimed funds. The account must remain open for the shorter of a four year period, ~~or~~

until all funds are claimed, or the expiration of the Extended Use Agreement. If funds are not claimed after the required four-year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes. All unclaimed property remissions to the Comptroller must be broken out by individuals and particular amounts.

(gf) Rent Adjustments for HOME, ~~and~~ TCAP RF, and HOME-ARP Developments:

(1) 100% HOME/TCAP-RF/HOME-ARP assisted Developments. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to 30% of the household's adjusted income;

(2) HOME/TCAP-RF/HOME-ARP Developments with any Market Rate units. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to the lesser of 30% of the household's adjusted income or the comparable Market rent; and

(3) HOME/TCAP-RF/HOME-ARP Developments layered with other Department affordable housing programs. If a household's income exceeds 80% at recertification, the owner must charge rent equal to the lesser of 30% of the household's adjusted income or the rent allowable under the other Program.

(h) Rent Adjustments for HOME-ARP Qualified Populations:

(1) Units restricted for occupancy by Qualifying Populations with incomes equal or less than 50% will have rents of 30% of the adjusted income of the household, with adjustments for number of bedrooms in the unit.

(2) Units restricted for occupancy by Qualifying Populations with incomes greater than 50% of median income but at or below 80% of the median income must pay rent specified in 24 CFR §92.252(a), high HOME rent.

(3) Units restricted for occupancy by Qualifying Populations with incomes greater than 80% of median income will follow the rent adjustments of §10.622(g).

~~(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.~~

~~(h.i)~~ Employee Occupied Units (HTC and THTF Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is calculated using the residential rental units/space in a building, employee occupied units are taken out of both the numerator and the denominator.

~~(i.j)~~ Owners of HOME, NSP, TCAP-RF, ~~and~~ NHTF, and HOME-ARP must comply with §10.403 of this chapter which requires annual rent review and approval by the Department's Asset Management Division or Department-procured vendor. Failure to do so will result in an Event of Noncompliance.

~~(j.k)~~ Owners are not permitted to increase the tenant-household portion of rent more than once during a 12 month period, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a federal housing program that requires such changes or- the household transfers to a larger unit size. If it is determined that the Development increases rent more than once in a 12 month

period, the Department will require the Owner to refund or credit the affected household. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household.

(l) If an Owner is increasing a household's rent \$75 or more per month, the Owner is required to provide the household a 120 day written notice of such increase, unless the Unit or household is governed by a federal housing program that requires such a change. If an Owner increases the household's rent more than \$75 without giving a 120 day notice, any amounts in excess of \$75 per month must be refunded or credited to the affected household(s). The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their tenant account. In the absence of a tenant election, a full refund check must be presented to the household within thirty days.

§10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the Development for at least 30 years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the criteria detailed in paragraphs (1) - (14) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department requests;

(2) At least once every three years the property will be physically inspected including the exterior of the Development, all building systems and 10% of Low-Income Units. No less than five but no more than 35 of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.607 of this subchapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All HTC households must be income qualified upon initial occupancy of any Low Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project-based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all HTC Low-Income Units. After the Compliance Period, utilities paid to the Owner are accounted for in the utility allowance. TCAP, Exchange, Bond, and THTF Developments layered with Housing Tax Credits no longer within the Compliance Period also include utilities paid to the Owner as part of the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded;

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc.), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period or if the Compliance Period was specifically extended beyond 15 years;

(10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;

(11) The total number of required HTC Low-Income Units ~~can~~must be maintained Development wide;

(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis;

(13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, ~~rental amounts~~, student status and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form; and

(14) Employee occupied units will be treated in the manner prescribed in §10.622(h) of this chapter (relating to Special Rules Regarding Rents and Rent Limit Violations).

(c) After the first 15 years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (4) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low-Income Unit. If a Development markets to students or leases more than 15% of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments);

(2) All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

(3) The Department will not monitor the Development's application fee after the Compliance Period is over; and

(4) Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance with subsection (b)(13) of this section.

(d) While the requirements of the LURA may provide additional requirements, right and remedies to the Department or the tenants, the Department will monitor post year 15 in accordance with this section as amended.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year 15 Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

§10.624 Compliance Requirements for Developments with 811 PRA Units

~~(a) One hundred and eighty days prior to the date an Owner expects to begin leasing, Developments that have agreed to rent Units to households assisted by Section 811 PRA must contact Department staff and begin accepting referrals. Failure to reserve the agreed upon number of Units for 811 households will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for debarment.~~

~~(b) Throughout the term of an 811 PRA Use Agreement, Owners must maintain the required number of 811 PRA households, and provide notice to the Department when an 811 PRA household is expected to vacate. Notice must be provided within seven calendar days of when the Development is notified that the household will vacate or in the event that the resident vacates without notice, upon discovery that the unit is vacant. Failure to notify the Department will be cited as noncompliance and will be referred to the Enforcement Committee to be considered for possible administrative penalties and may be proposed for debarment, in accordance with the Enforcement Rule under 10 TAC Chapter 2.~~

(a) Compliance with 811 PRA requirements will be monitored at least once every three years, either through an onsite review or a desk review. During the review, Department staff will monitor for compliance with program eligibility which includes the following:

(1) The household must include at least one person with a disability and who is 18 years of age or older and less than 62 years of age at the time of admission into the Development; and the person with a disability must be part of one or more of the target populations for the 811 program.

(2) The household's income is less than the extremely low income limit at move in.

(3) The Owner must check the following criminal history related to drug use of the household. Households in the 811 PRA program must not include:

(A) Any member(s) who was evicted in the last three years from federally assisted housing for drug-related criminal activity;

(B) Any member that is currently engaged in illegal use of drugs or for which the Owner has reasonable cause to believe that a member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceful enjoyment of the property by other residents; and

(C) Any member who is subject to a State sex offender lifetime registration requirement.

(4) Student Status. If the household includes a student, the student must meet all of the criteria described in HUD handbook 4350.3 par. 3-13B, as modified by the September 21, 2016, Federal Register Notice 5969-N-01.

(b) Noncompliance will be cited if the Development:

(1) Leased a Unit to a household that is not qualified for the 811 PRA program in accordance with the requirements of subsection ~~(a)(1)~~ (1) - (4) of this section;

(2) Fails to Use the Enterprise Income Verification system; ~~for documenting the household's income;~~

(A) EIV summary report;

(B) EIV income report;

(C) EIV income discrepancy report;

(D) EIV No income reported;

(E) EIV no income report by health and human services or social security administration;

(F) EIV new hires report;

(G) Existing tenant search;

(H) Multiple Subsidy report;

(I) Failed EIV pre-screening report;

(J) Failed verification report;

(K) Deceased tenants report;

(L) Owner approval letter authorizing access to EIV for the EIV coordinators;

(M) EIV Coordinator Access Authorization form (CAAF);

(N) The rules of behavior for staff that use EIV reports/data to perform their job functions; and

(O) Cyber awareness challenge certificates of completion for anyone that uses EIV or has access to EIV data (annually);

(3) Fails to properly document and calculate deductions in order to determine adjusted income (dependent, child care, disability assistance, elderly/disabled family, unreimbursed medical expenses);

(4) Fails to use the required HUD forms listed in §10.612(d) of this subchapter; ~~or the following forms when applicable:~~

~~(A) EIV summary report;~~

~~(B) EIV income report;~~

~~(C) EIV income discrepancy report;~~

~~(D) EIV No income reported;~~

~~(E) EIV no income report by health and human services or social security administration;~~

~~(F) EIV new hires report;~~

~~(G) Existing tenant search;~~

~~(H) Multiple Subsidy report;~~

~~(I) Failed EIV pre-screening report;~~

~~(J) Failed verification report;~~

~~(K) Deceased tenants report;~~

~~(L) Owner approval letter authorizing access to EIV for the EIV coordinators;~~

~~(M) EIV Coordinator Access Authorization form (CAAF);~~

~~(N) The rules of behavior for staff that use EIV reports/data to perform their job functions; and~~

~~(O) Cyber awareness challenge certificates of completion for anyone that uses EIV or has access to EIV data (annually);~~

(5) Accepts funding that limits the ability for the Department to place the agreed upon number of 811 Units at the Development;

(6) Violates §1.15 of this title (relating to Integrated Housing);

(7) Fails to properly calculate the tenant portion of rent;

(8) Fails to properly calculate the tenant security deposit;

(9) Fails to use the HUD model lease;

(10) Egregiously fails to disperse 811 PRA Units throughout the Development;

(11) Fails to conduct required interim certifications;

(12) Fails to conduct annual income recertification; ~~or~~

(13) Fails to prominently display 11 x 14 sized, as required by 24 CFR Part 110, Fair Housing Poster HUD-928.1 (English), HUD 928.1A (Spanish), and in other languages as required by Limited English Proficiency Requirements;:-

(14) Improperly charges an application or late fee;

(15) Fails to issue HUD notices as required; or

(16) Failure to issue utility allowance reimbursement in accordance with §8.4.

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Figure: 10 TAC §10.625

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Violations of the Uniform Physical Condition Standards	All Programs	Yes
Noncompliance related to Affirmative Marketing requirements	All Programs	No

Development is not available to the general public because of leasing issues	HTC	Yes
TDHCA has received notice of possible Fair Housing Act Violation from HUD or DOJ and reported general public use violation in accordance with IRS 8823 Audit Guide Chapter 13	HTC	Yes
TDHCA has referred unresolved Fair Housing Design and Construction issue or other Fair Housing noncompliance to the Texas Workforce Commission	All programs	No
Development has gone through a <u>deed in lieu of foreclosure</u> <u>or foreclosure</u>	All programs	Yes
Development is never expected to comply due to failure to report or allow monitoring	All programs	Yes
Owner did not allow on-site monitoring or <u>physical inspection and/or</u> failed to notify residents resulting in inspection cancelation	All programs	Yes
LURA not in effect	All programs	Yes
Project failed to meet minimum set aside	HTC and Bonds	Yes
No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA	HTC	Yes, if non- profit issue, No, if HUB issue
Development failed to meet additional state required rent and occupancy restrictions	All programs	No
Noncompliance with social service requirements	HTC and Bond	No
Development failed to provide housing to the elderly as promised at application	All programs	No
Failure to provide special needs housing as required by LURA	All programs	No
Changes in Eligible Basis or Applicable percentage	HTC	Yes
Failure to submit all or parts of the Annual Owner's Compliance Report	All programs	Yes for part A, No for other parts
Failure to submit quarterly reports as required by §10.607	All programs	No

Noncompliance with utility allowance requirements described in §10.614 of this subchapter and/or Treasury Regulation §1.42-10	All programs	Yes if rent exceeds limit, no if related to noncompliance with other requirements, such as posting, updating etc.
Noncompliance with lease requirements described in §10.613 of this subchapter	All programs	No
Asset Management Division has reported that Development has failed to establish and maintain a reserve account in accordance with §10.404 of this chapter	All programs	No
Failure to provide a notary public as promised at application	HTC	No
Violation of the Unit Vacancy Rule	HTC	Yes
Casualty Loss	All programs	Yes
Failure to provide pre-on-site monitoring and/or physical inspections documentation	All programs	No
Failure to provide amenity as required by LURA	<u>All programs</u>	No
Failure to pay asset management, compliance monitoring or other required fee	HTC, TCAP, Bond, NHTF, TCAP-RF, Exchange, <u>HOME-ARP,</u> and <u>HOME₂ and NSP</u> Developments committed funds after August 23, 2013	No
Change in ownership without department approval (other than removal of a general partner in accordance with §10.406 of this chapter)	All programs	No

Noncompliance with written policy and procedure requirements	All programs	No, unless finding is because Owner refused to lease to Section 8 households
Program Unit not leased to Low-Income household/ Household income above income limit upon initial occupancy	All programs	Yes
Program unit occupied by nonqualified full-time students	HTC during the Compliance Period, Bond, and HOME/ NSP developments committed funds after August 23, 2013, and , 811 and HOME-ARP Developments	Yes
Low Income Units used on a transient basis	HTC and Bond	Yes
Violation of the Available Unit Rule	All programs, but only during the Compliance Period for HTC, TCAP, and Exchange	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	All programs	Yes
Failure to provide Tenant Income Certification and documentation	All programs	Yes
Unit not available for rent	All programs	Yes
Failure to collect data required by §10.612 (b)(1) and/or §10.612(b)(2)	HTC, TCAP, Exchange, and Bond <u>All programs</u>	No
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	HTC, HOME, <u>HOME-ARP</u> , TCAP- RF, NHTF, and NSP	Yes
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	HOME, <u>TCAP-RF, HOME Match, and HOME ARP</u>	NA No
Violation of the Integrated Housing Rule	All programs	No

Failure to resolve final construction deficiencies <u>within the corrective action period</u>	All programs	No
Noncompliance with the required accessibility requirements such as §504 of the Rehabilitation Act of 1973, the 2010 ADA standards as modified in the Department rules, or other accessibility related requirements of a Department rule	HOME, <u>HOME-ARP</u> , NSP, TCAP- RF, NHTF, THTF, and f For <u>those</u> HTC properties that were awarded after 2001 or that were	No
Noncompliance with the notice to the Department requirements described in §10.609 of this subchapter	All programs	No
Failure to reserve Units for Section 811 PRA participants	811 developments	NA <u>No</u>
Failure to notify the Department of the availability of units	811 developments	NA <u>No</u>
Owner failed <u>to check</u> required criminal history	811 d Developments	NA <u>No</u>
Failure to use Enterprise Income Verification System	811 developments	NA <u>No</u>
Failure to properly document and calculate adjusted	811 developments	NA <u>No</u>
Failure to use required HUD forms	811 developments	NA <u>No</u>
Accepted funding that limits <u>Section</u> 811 participation	811 developments	NA <u>No</u>
Failure to properly calculate tenant portion of rent	811 developments	NA <u>No</u>
Failure to use HUD model lease	811 developments	NA <u>No</u>
Failure to disperse <u>Section</u> 811 PRA units	811 developments	NA <u>No</u>

Failure to conduct interim certifications	811 developments	NA <u>No</u>
Failure to conduct annual income recertification	811 developments	NA <u>No</u>
Asset Management Division has reported that Development has failed to review <u>submit</u> rents on an annual basis in accordance with §10.403 of this chapter	HOME, NSP, TCAP RF, <u>HOME-ARP</u> , and NHTF	NA <u>No</u>
Unit Leased to a household that is not qualified for the 811 PRA program	811 Developments <u>developments</u>	NA <u>No</u>
Failure to submit documentation for a mail in review	<u>All programs</u>	<u>Yes</u>
Noncompliance with CHDO Requirements	HOME	NA <u>No</u>
Failure to disperse unit designations across all unit types – Average Income only	<u>HTC</u>	<u>No</u>
Household income designations was improperly changed or removed	<u>All programs</u>	<u>No</u>
Failure to maintain the specific unit mix required in the Land Use Restriction Agreement (LURA)	<u>HOME, HOME-ARP, TCAP-RF and NHTF</u>	<u>No</u>
Increased a household's rent more than one time during a 12-month period	<u>All programs</u>	<u>No</u>
Failure to issue a notice of rent increase in accordance with §10.622(k)	<u>All programs</u>	<u>No</u>
Failure to market to veterans as required in the LURA	<u>HTC</u>	<u>No</u>

<u>Failure to include veteran statement in the application</u>	<u>All programs</u>	<u>No</u>
<u>Failure to properly calculate and/or collect security deposit-Section 811 only</u>	<u>Section 811</u>	<u>No</u>
<u>Development inaccurately charged an application or late fee- Section 811 only</u>	<u>Section 811</u>	<u>No</u>
<u>Failure to issue utility allowance reimbursement in accordance with Section 811 only</u>	<u>Section 811</u>	<u>No</u>
<u>Failure to issue HUD Notices – Section 811</u>	<u>Section 811</u>	<u>No</u>
<u>Failure to submit completed IRS Form(s) 8609 with Part II completed by the first year of the credit period</u>	<u>HTC, Exchange and TCAP</u>	<u>No</u>
<u>Failure to provide notice to applicants and households prior to the LURA term ending</u>	<u>All programs</u>	<u>No</u>