Housing Tax Credit
Compliance Training Seminar
Table of Contents

Supplements

- Annual Eligibility Certification form and instructions
- Income Certification form, supplement and instructions
- Form 8609
- Form 8823
- Affirmative Fair Housing Marketing Plan form and instructions
- TDHCA Program Rules, Title 10, Chapter 60 of the Texas Administrative Code
- TDHCA Portfolio Management & Compliance Division Staff List with contact information

For information on affordable housing seminars in your area, email education@taa.org, visit www.taa.org or call 512/479-6252.

Housing Tax Credit Training

Contact Information

Physical Address:	**Mailing Address**
TDHCA	TDHCA
221 East 11th Street	PO Box 13941
Austin, Texas 78701	Austin, Texas 78711-3941

Website: www.tdhca.state.tx.us

Phone Number: (512)475-2906 or 1(800)643-8201 (toll free in Texas only)

Patricia Murphy
Chief of Compliance and Asset Oversight

A complete staff listing including direct phone numbers and email address is provided

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Housekeeping Announcements

- Breaks: Morning and Afternoon
- Lunch: 12-1:00pm
- Cell Phones (and pagers): Silence or turn off
- Conclusion: approximately 4:30pm
- Certificates will be presented at the conclusion of the class
  - Must be present to receive

Revised 9/16/2011

Module 1

Overview

Overview

- Housing Tax Credit Program created under the Tax Reform Act of 1986
- Provides an incentive for private investors to build housing for moderate to low-income households
- Offers a dollar for dollar reduction in the taxpayer's federal income tax return

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Overview

- Each state receives a fixed allocation of credits based on population issued from the Internal Revenue Services (IRS)
- HTC program administered at the state level by the State Housing Finance Agency (SHFA)
- State has discretion in determining which projects to award credits

Revised 9/16/2011

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Overview

- State allocates credits based on applications
- Application considered under the state's Qualified Allocation Plan (QAP)
- State required to allocate 10% of total credits to projects sponsored by non-profit organizations
- Texas allocates annually

Revised 9/16/2011

Overview

- Qualified Allocation Plan (QAP)
  - Sets priorities
  - Addresses specific housing goals
  - Establishes minimum requirements (threshold)
  - Establishes selection criteria to allow for competitiveness
  - Published annually

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Overview

- Threshold Criteria: Criteria used to determined whether the Development satisfies the minimum level of acceptability for consideration as specifically defined in QAP
- Selection Criteria: Criteria used to determine housing priorities of the State under the Housing Tax Credit Program

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Overview

- Examples of Selection Criteria
  - Additional rent and occupancy restrictions
  - Size of units
  - Specific amenities
  - Supportive services
  - Location
  - Extended Affordability Period
  - Participation of a Historically Underutilized Businesses (HUB)

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Overview

- Program allows for 2 types of credit percentages:
  - 9% credit:
    - New construction
    - Rehabilitation
  - 4% credit
    - Acquisition
    - Developments financed with at least 50% BONDS

Revised 9/16/2011

Overview

- Total amount of credits awarded is based on:
  - specific cost incurred with development
  - Percentage of units that are to be rented to low-income households
  - Applicable credit percentage (9% vs 4%)
- Generally, credits applied to taxpayer's federal income tax return over a 10 year period

Revised 9/16/2011

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Overview

- Internal Revenue Service (IRS)
  - Sets program requirements:
    - Section 42 of IRS Code
    - 8823 Audit Guide (revised January 2011)
    - Treasury Regulations 1.42
    - Revenue Rulings, Procedures and Notices
    - Treasury Decisions
  - Process Tax Returns
  - Responsible for recapturing credits

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Overview

- US Department of Housing and Urban Development (HUD)
  - Publishes annual income limits
  - Chapter 5 of the 4350.4 (revised August 2009)
    - Outlines what are types of income and asset inclusions/exclusions
    - Stipulates how to calculate annual income for a household

CHAPTER 5 & 5

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Overview

- Texas Department of Housing and Community Affairs (TDHCA)
  - State Housing Finance Agency (SHFA)
  - Allocates tax credits
  - Publishes QAP
  - Publishes Compliance Monitoring Rules (Title 10, Chapter 60 of the Administrative Code- 10TAC §60)
  - Reports to IRS
  - Provides technical assistance

Revised 9/16/2011

Overview

- Owners
  - Provide affordable units
  - Claim tax credits
  - Pay compliance fees
  - Maintain compliance
  - Responsible for completing Part II of Form 8609

Revised 9/16/2011

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Overview

- State Housing Finance Agency (TDHCA) required to conduct 1st monitoring review no later than the end of the 2nd calendar year after the last building is placed in service
- Onsite monitoring reviews conducted at least every three years throughout the affordability period

Revised 9/16/2011

Overview

- Once an allocation of tax credits is made, the owner has until the end of the 2nd calendar year to place building in service
- Owner can elect to begin the 1st year of the credit period:
  - the year the buildings are placed in service or
  - Defer to the next calendar year

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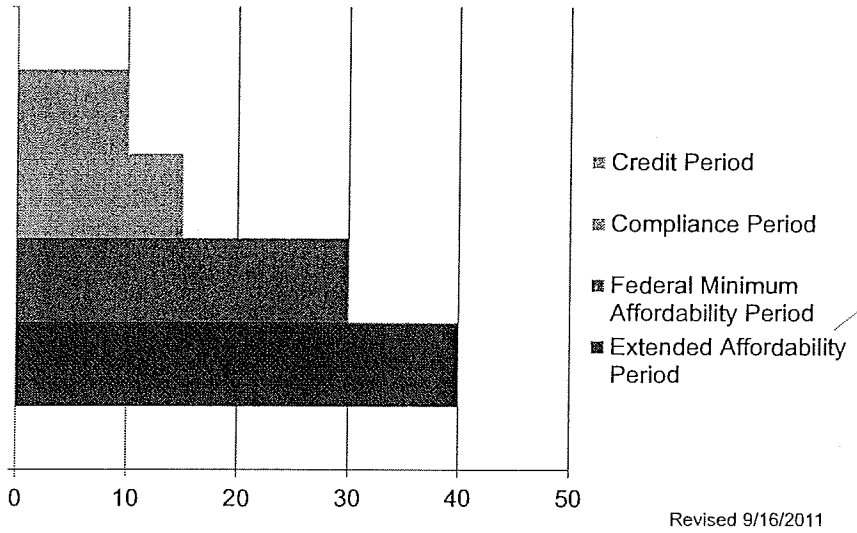
Overview



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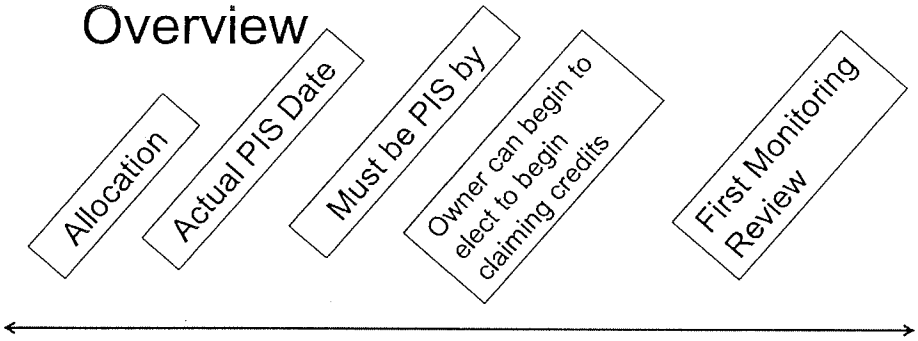
READ LUHAS FOR EXTENDED AFFORD PERIOD VS. COMP PERIOD FOR REQUIREMENTS

Overview



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Module 1: Review

1. True or False: The State Housing Finance Agency is responsible for recapturing tax credits? F

2. The State Housing Finance Agency must complete a development's first monitoring review by what deadline?

3. Over how many years are tax credits typically claimed? 10

4. True or False: The owner must begin claiming tax credits the year the project is placed in service?

5. What are the 2 types of credit percentages? 9/4

6. A building is placed in service June 15, 2010. What is the last date the owner can claim credits?

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Module 2

Federal Program Rules

Federal Program Rules

- Qualified low-income housing project:
  - Any project for residential rental property if the project meets one of two requirement elected by the owner on Form 8609, line 10c [IRC§42(g)(1)]
  - Line 10c found in Part II of From 8609
    - Owner responsible for completing and submitting to the Department
    - Elections made are irrevocable

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Federal Program Rules

- Elections made by owner in Part II of form 8609 define
  - Definition of a Project (line 8(b))
  - First year of the credit period (line 10(a))
  - Minimum set-aside (line 10(c))

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Federal Program Rules

- Line 8(b)

Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?	☐	**Yes**	☐	**No**

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Federal Program Rules

Scenario 1:

Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?	☐	**Yes**	☐	**No**

If No, then this building is a project

Scenario 2:

Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?	☐	**Yes**	☐	**No**

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Federal Program Rules

- Line 10(a)

Elect to begin credit period the first year after the building is placed in service (section 42(f)(1))	☐	Yes	☐	No

- Placed in Service date found in Part I of Form 8609 line 5

Date building place in service	..... ►	...../...../.....

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Federal Program Rules

- Line 5 of Form 8609 states that the building was placed in service June 15, 2010
- Based on the following election, when is the first year of the credit period?

Elect to begin credit period the first year after the building is placed in service (section 42(f)(1))....	☐	Yes	☐	No

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Federal Program Rules

- Line 10(c)

Elect minimum set-aside requirement (section 42(g)) (see instructions)	☐ 20-50	☐ 40-60	☐ 25-60 (NYC Only)

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Federal Program Rules

20/50

20% of low-income units are reserved for households ≤ 50% AMI

40/60

40% of low-income units are reserved for households ≤ 60% AMI

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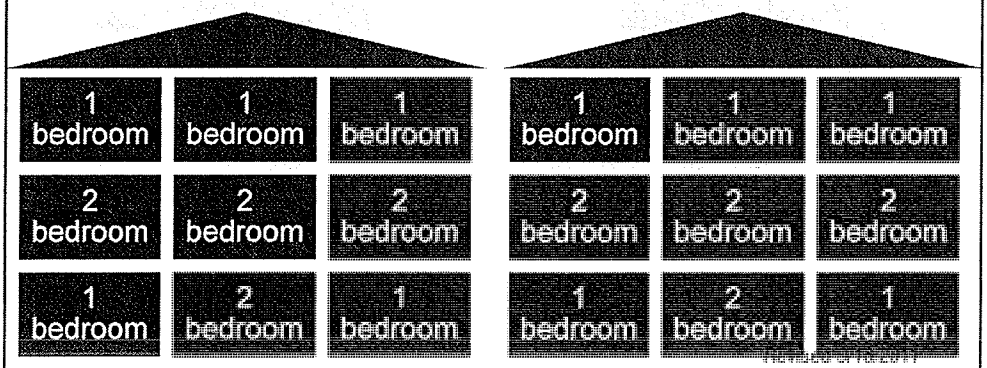
Federal Program Rules

- Minimum Set-Aside
  - Established minimum number of tax credit units required to claim any credits
  - Must be met by the end of the first year of the credit period
  - Must be maintained throughout the affordability period

Revised 9/16/2011

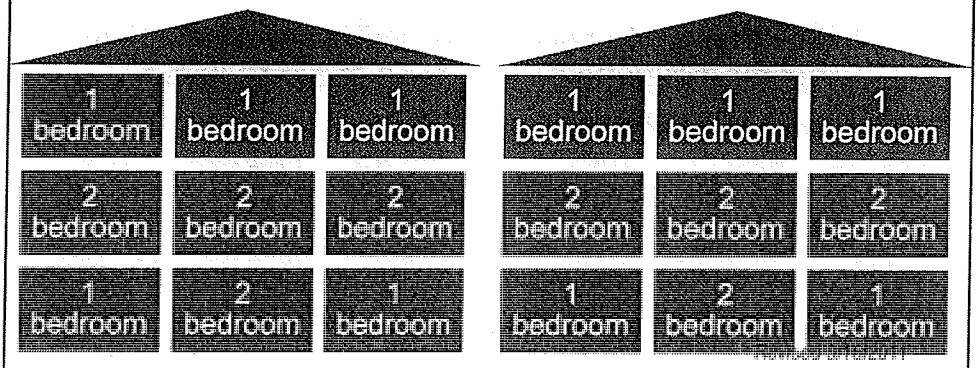
Federal Program Rules

- Multiple Building Project
  - If the owner has elected the 40/60 set-aside, how many units must be restricted?



Federal Program Ruled

- Each building as a Separate Project:
  - If the owner has elected the 40/60 set-aside, how many units must be restricted?



Federal Program Rules

- Discussion: Minimum Set-Aside
  - Oceanside Town Homes
    - Placed in Service 2009
    - Owner elected to begin the credit period in 2010
    - 250 low income units
    - 40/60 set aside
  - The property charged an unsupportable application fee resulting in ALL units not being properly rent restricted

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Federal Program Rules

- Applicable Fraction
  - Smaller of the unit fraction or the floor space fraction [IRC§42(c)(1)(B)]
- Owner may choose to rent additional units to low-income households in excess of the required minimum set-aside

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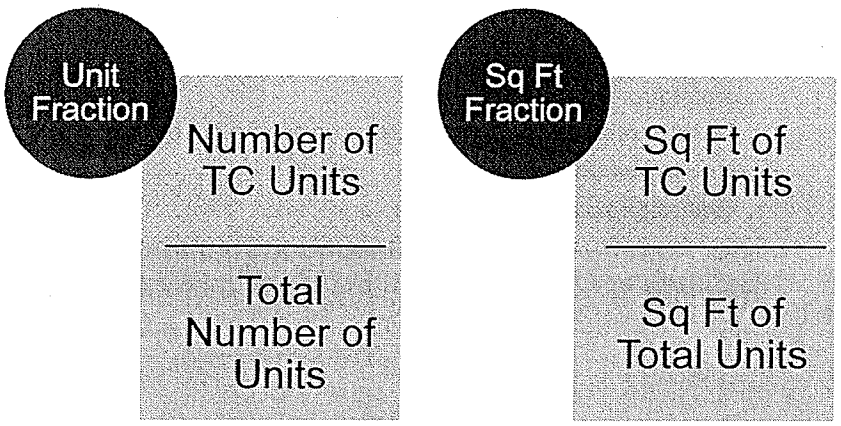
By Building

Federal Program Rules



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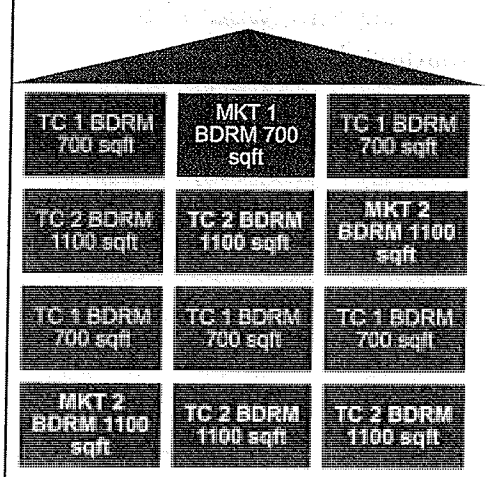
Federal Program Rules

- Calculating Applicable Fraction:



What is the applicable fraction of this building based on the unit calculation?

9/12

.75

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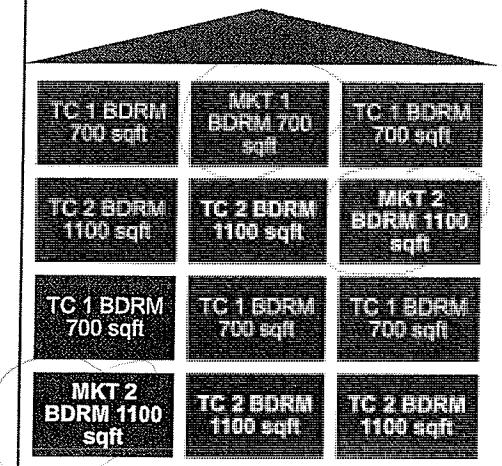
Federal Program Rules

- Calculating Applicable Fraction:



What is the applicable fraction of this building based on the square footage calculation?

4,200
6,600
10,800
- 2,900
7,900

73.15%

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Federal Program Rules

- For the purpose of determining the amount of tax credits for which the building is eligible, what is the applicable fraction for this building?

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Federal Program Rules

- Exempt Units:
  - Management Units
  - Maintenance Units
  - Courtesy Office Units

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Federal Program Rules

- Revenue Ruling 92-61 and Revenue Procedure 2004-82
  - Not classified as a residential rental unit, rather a facilities reasonably required by a project that are functionally related and subordinate to residential rental units
  - Unit taken out of both the numerator and denominator of the applicable fraction
  - Cost can be included in Eligible Basis

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Federal Program Rules

- If in later year of the credit period, the unit is no longer occupied by an employee, the unit is now included in both the numerator and denominator of the applicable fraction for that year
- To maintain compliance, the unit needs to be leased to an eligible household as soon as possible (100% low-income buildings)
- If building is mixed income (both low-income and market), the exempt unit must be a market unit

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Federal Program Rules

- Model Units
  - Considered a residential rental unit
  - Included in Eligible Basis
  - In general, remove unit from the numerator of the applicable fraction
    - Example: Property has a total of 250 low-income units and 1 model unit. The unit fraction would be 249/250 or 99.6%

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Federal Program Rules

- Extended Use Agreement
  - No credit shall be allowable with respect to any building for the taxable year unless an extended low-income commitment is in effect as of the end of such taxable year [IRC §42(h)(6)(A)]
- Land Use Restriction Agreement (LURA)

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Federal Program Rules

- Process to have LURA executed
  - LURA templates available on TDHCA website
  - All drafts must be submitted to the Department by September 1st of the intended first year of the credit period
    - Must include all original signature pages
- No 8609's will be issued until original recorded document is received

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Federal Program Rules

- If the LURA is not fully executed by the end of the 1st year of the credit period
  - Owner will be notified by regular and certified mail
  - Standard 90 day corrective period given
  - 8823's will be issued to the IRS reporting the event at the end of the 90 day corrective action period
  - Owner has 1 year from the date of notification to resolve the issue before credit is lost [IRC§42(h)(6)(J)]

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Federal Program Rules

- Casualty Loss
  - Damage, destruction or loss of property resulting from identifiable event that is sudden, unexpected or unusual
  - Should be able to prove that losses were the direct result of the casualty and not a result of a normal use, owner's willful neglect or progressive deterioration
  - IRC§42(j)(4)(E)]
  - Example: Fire

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Federal Program Rules

- Casualty Loss from a Disaster
  - Damage, destruction or loss of property resulting from an event that is declared by the President as a disaster requiring federal assistance
    - Revenue Procedure 2007-54
  - Example: Hurricane Ike

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Federal Program Rules

- Owner has 30 days from the day of the event to report the incident to the Department
- 2 years from the end of the year in which the event occurred to complete repairs
- Owner must notify the Department once restoration is completed

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Federal Program Rules

- Additional information can be found on the TDHCA website under Support & Services, Compliance and Asset Oversight, Disaster Relief/Casualty Loss

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Module 2: Review

1. What document indicates the first year of the credit period?
8609

2. If the owner elected NO on line 8(b) of IRS Form 8609, what is the result? SEPA BUILDING SEPA PROJECT

3. If the owner elected YES on line 8(b) on IRS Form 8609, what impact does the election have on minimum set-aside? OBTAINED OVERALL BUILDINGS CONTAINED IN THAT "PROJECT"

4. By when is the Land Use Restriction Agreement (LURA) required to be recorded? 8/4/2011 DEC 31 OF 1ST YEAR OF CREDIT PERIOD

5. The managers unit is removed from what part of the applicable fraction? BOTH (NUMERATOR & DENOM.)

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Module 3

Income and Rent Limits

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Income and Rent Limits

- HUD Hold Harmless Income Limits
  - In 2007 HUD changed the data set used to estimate Area Median Income which reflected a decrease in AMI
  - Rather than drop limits, HUD left the income levels that were published in 2006
  - HUD no longer "holding harmless" the limits and in some areas, they are decreasing

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Income and Rent Limits

- HERA Income Limits
  - Because of Housing and Economic Recovery Act of 2008 (HERA), HUD published an additional set of income limits
  - Section 3009
    - Once you property is placed in service your income limits will not decrease
  - Can use HERA limits if least one building in the project is placed in service before December 31, 2008

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Income and Rent Limits

- Placed in Service
  - Date on which the first unit in the project is certified as being ready and available for its intended use
  - IRS Notice 88-116
- Income limits determined on a project basis

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Income and Rent Limits

Applicable Income Limit					
	2008	2009	2010	2011	2012
HUD VLI	$30,000	$29,000	$28,000	$26,000	$27,000
Project 1 (PIS 2008)	$30,000	$30,000	$30,000	$30,000	$30,000
Project 2 (PIS 2009)	N/A	$29,000	$29,000	$29,000	$29,000
Project 3 (PIS 2010)	N/A	N/A	$28,000	$28,000	$28,000
Project 4 (PIS 2011)	N/A	N/A	N/A	$26,000	$27,000

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Income and Rent Limits

- Rents are calculated from the income limits
- If income limits decrease, so do the rent limits
- Gross Rent Floor
  - Gross rent will not fall below limits in affect at time of the initial allocation of credits
  - Revenue Procedure 94-57
- Not needed in past as HUD previously held income limits harmless

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Income and Rent Limits

- Determining Initial Date of Allocation

Activity	Initial Date of Allocation
9% Credit	Date Carryover Agreement signed by the Department
4% Credit	Effective date of the Determination Agreement
TCAP	Same date as accompanied credit
Exchange	Effective date of the Sub Award Agreement

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Income and Rent Limits

- In General
  - Rents should not be lower than the rents at the time of allocation
  - If the project was in service, income and rent limits should not be lower than last year

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Income and Rent Limits

- Rural Income Limits
  - HTC projects located in rural areas (as defined by Section 520 of the Housing Act of 1949) have an income limit equal to the greater of
    - Actual Area Median Income (AMI) or
    - The National Non-Metro Income Limit
  - Determined by city and not county
  - Does not apply to
    - HTC projects layered with BONDS
    - HOME units on HTC/HOME projects

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Income and Rent Limits

- The Income and Rent Limits are published on the TDHCA website under Support & Services, Compliance and Asset Oversight, Income and Rent Limits
- Listed by program
- Separate tables published to incorporate changes
  - Note, Income limits are determined by household size and Rent limits are determined by bedroom size

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Income and Rent Limits

Income Limits

- If your project had at least one building placed in service prior to 12/31/2008 use HTC Income Limit Table 1 (XLS).
- If your project had at least one building placed in service between 1/1/2009 and 5/14/2010 use HTC Income Limit Table 2 (XLS).
- If your project placed their first building in service after 5/14/2010 use HTC Income Limit Table 3 (XLS).

Revised 9/16/2011 ?

NOW DONE BY PROPERTY

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Income and Rent Limits

Rent Limits

- If your project was placed in service on or prior to December 31, 2008 use Tax Credit Rent Table 1 (XLS)
- If your project was allocated Housing Tax Credits on or prior to 2/12/2008 and placed in service on or after 1/1/2009 OR, if your project received an allocation between 3/19/2009 and 5/14/2010 use Tax Credit Rent Table 2 (XLS)
- If your project received an allocation between 2/13/2008 and 3/18/2009 use Tax Credit Rent Table 3 (XLS)
- If your project receives an allocation on or after 5/14/2010 use Tax Credit Rent Table 4 (XLS)

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Module 3: Review

1. True or False? HERA legislation provided that once a Housing Tax Credit project is placed in service their income limits will not increase?

2. Rent limits are calculated from what?

3. A 100% Housing Tax Credit Development consisting of 36 units is located in a rural area. Of the 36 units, 10 of the units are also HOME units. Can the property use the Rural Income/Rent Limits?

4. If a project is placed in service in 2011, can the HERA limits be used?

5. What is the initial date of allocation for a 4% tax credit deal?

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Module 4

Rents

Utility Allowance

Rents

- Highest rent tier set by minimum set-aside

20/50
- 50% AMI is the highest rent and income tier

40/60
- 60% AMI is the highest rent and income tier

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Rents

- There may be additional rent and occupancy restrictions that must also be met
  - 30% AMI
  - 40% AMI
  - 50% AMI

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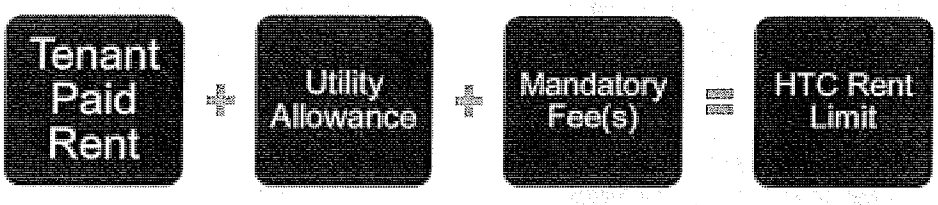
Rents

- Maximum Rent Calculation:



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Rents

- Example:
  - One bedroom 60% maximum = $650
  - One bedroom utility allowance = $125
  - What is the maximum the household can be charged in rent?

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Utility Allowances

- Treasury Regulation 1.42-10
  - Specifies federally approved methodologies to determine the utility allowance
  - 8823 Audit Guide, Chapter 18
  - 10TAC§60.109
    - State Rule that details how methodologies are implemented by TDHCA

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Utility Allowances

- Include any utility, other than phone, cable or internet, for which the household is financially responsible

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Utility Allowances

- IRS Notice 2009-44
  - When utilities are paid to or through the owner or the building

Include the utility in the utility allowance calculation

- When the billing to the household is based on the households actual consumption

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Utility Allowances

Exclude the utility from the utility allowance calculation

- When the billing to the household is based RUBS or allocation formula
- Is considered a mandatory fee

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Utility Allowances

- Utility Allowance Methodologies
  1. Rural Housing Services (RHS)
  2. Housing and Urban Development (HUD)
  3. Public Housing Authority (PHA)
  4. Written Local Estimate
  5. HUD Model Schedule
  6. Energy Consumption Model
  7. Actual Use Method/Agency Estimate

ONLY FOR THOSE PROGRAMS

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Utility Allowances

- RHS Utility Allowance 1.42-10(b)(1)
  - If the building or its tenants receive assistance from Rural Development, then the applicable utility allowance for all rent restricted units in the building is the utility allowance determined under the method prescribed by RD for the building

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Utility Allowances

- HUD Utility Allowance 1.42-10(b)(3)
  - If the rents and utility allowance building are reviewed by HUD on an annual basis (HUD-regulated building), the applicable utility allowance for all rent restricted units in the building is the applicable HUD utility allowance
    - Example: Project Based Section 8 Rental Assistance

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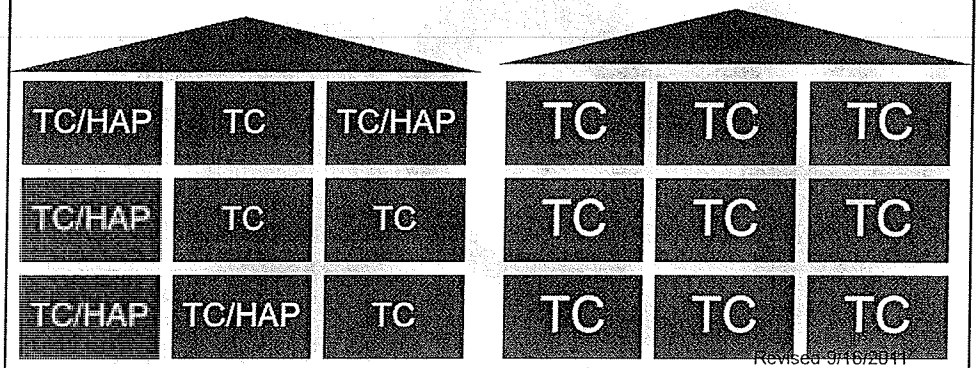
Utility Allowances

- Example

What utility allowance will Building 1 use?

What utility allowance will Building 2 use?



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Utility Allowances

- Public Housing Authority (PHA) 1.42-10(b)(4)(ii)(A)
  - Must be the most applicable PHA to the development
    - Operational areas of a PHA defined in Chapter 392 of the Texas Local Government Code
    - Must be the allowance published for Section 8 Existing Housing Program
  - 10ATC§60.109(d)(1)

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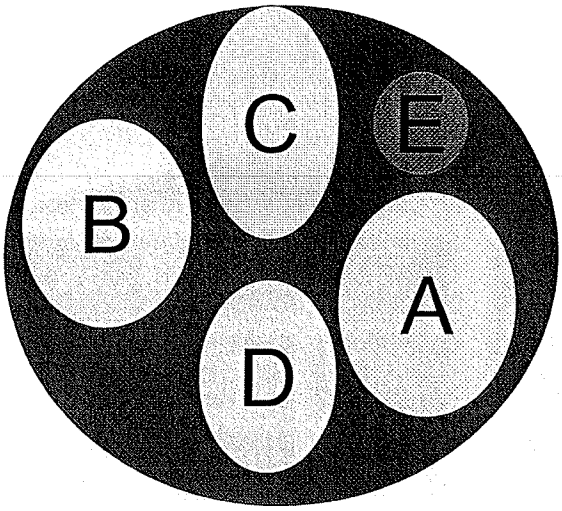
Utility Allowances



City A	PHA with Section 8
City B	No PHA
City C	PHA for public housing only
City D	No PHA
City E	No PHA
[illegible]	PHA with Section 8

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Utility Allowances

- If different allowances are published based on building type, must use the correct allowance based on the building type(s) found on the project
- If the PHA publishes an allowance for Energy Efficient units, owner must demonstrate that the units meet the standards of the PHA

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Utility Allowances

- Written Local Estimate 1.42-10(b)(4)(ii)(B)
  - Must be in writing from the utility provider
  - Estimated cost for a utility for a unit of similar size and construction for the geographic area in which the project is located
  - Must be a residential utility provider that services the project
  - Must include all component charges and be signed by the utility representative issuing the estimate
  - 10ATC§60.109(d)(2)

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Utility Allowances

- HUD Model Schedule 1.42-10(b)(4)(ii)(D)
  - www.huduser.org/datasets/lihtc.html
  - Rates used can be no older that 60 days prior to the beginning of the 90 day implementation period
  - Rates used must be from the applicable utility provider to the project
  - 10ATC§60.109(d)(3)

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Utility Allowances

- Energy Consumption Model 1.42-10(b)(4)(ii)(E)
  - Calculated by
    - Licensed mechanical engineer, or
    - A qualified professional as approved by the State Agency
      - Individuals with a RESENT or Certified Energy Manager (CEM) designation
  - 10ATC§60.109(d)(4)

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Utility Allowances

- Actual Use Method 1.42-10(b)(4)(ii)(C)
  - The Department will evaluate the request within 45 days of receipt
  - Allowance will be calculated by multiplying the rates in effect no earlier than the 60 days before the beginning of the 90 day implementation period by the average utility usage for the units in the sample
  - Allowances will be rounded up to the next whole dollar
  - 10ATC§60.109(e)

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Utility Allowances

- Combining Methodologies [10TAC§60.109(f)]
  - With the exception of RHS buildings and HUD regulated buildings, owners may combine methodologies
    - Example: The residents of Murphyville Manor are responsible for electricity and gas
      - The owner has elected to use the HUD Model Schedule to calculate the electric portion of the allowance and the Actual Use Method to calculate the gas portion of the allowance

Revised 9/16/2011

Utility Allowances

- Changing Methodologies [10TAC§60.109(a)]
  - May not change methodologies without prior approval from the Department
  - To obtain approval, submit a request to the Department and include:
    - Completed Utility Allowance Questionnaire
    - All applicable back up (based on methodology)

Revised 9/16/2011

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Utility Allowances

- Annual Review [10TAC§60.109(g)]
  - Written Local Estimate, HUD Model Schedule, Energy Consumption Model and Actual Use Method must be reviewed, once a calendar year
    - Must be reviewed by the Department
  - If using PHA any increase must be implemented for rent due 90 days after the change
    - Can be implemented sooner
  - If using RHS or HUD method, must comply with all aspects as prescribed by RHS/HUD

Revised 9/16/2011

Utility Allowances

- For annual review of or initial request to switch to a Written Local Estimate, HUD Model Schedule, Energy Consumption Model and/or Actual Use Method
  - Must post intent in a common area of the leasing office at the beginning of the 90 Day Notification Period
  - Simultaneously submit to the Department for review
  - Must wait the 90 days to implement the changes

Revised 9/16/2011

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Utility Allowances

- When does the 90 Day Notification Period Begin?

Methodology	Beginning of 90 Days
Written Local Estimate	Date of Letter from Utility Provider
HUD Model Schedule	Date entered as "Form Date"
Energy Consumption Model	60 days after the end of the last month of the 12 month period for which data was used to compute the estimate
Actual Use Method	Date Allowance is approved by TDHCA

Revised 9/16/2011

Module 4: Review

1. Can the utility paid to or through the owner of a building based on RUBS be included in the utility allowance calculation? NO

2. The rent limit for a 1 bedroom unit is $550. The tenant rent is $425 and the utility allowance is $85. The resident pays the water and sewer to the owner and receives a monthly bill based on the square footage of their unit. The bill for January is $35, February $55 and March $40. How much can the owner bill the resident to ensure that the rent remains restricted? JAN 25 FEB 40 MAR 40

4. Does an owner have to request prior approval from the Department to switch between utility allowance methodologies? YES

5. If an owner has implemented a written local estimate for the utility allowance methodology and has a household who has a Section 8 voucher, what is the correct utility allowance for that unit? OFFICE OWNS VOUCHER

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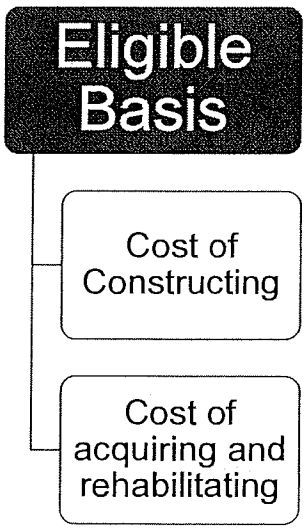
Module 6

Eligible Basis and Fees

Eligible Basis



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Eligible Basis

- The amount of credit for which an owner is awarded and entitles to is directly related to the eligible basis (eligible cost)
- Includes the cost for depreciable assets on a building by building basis
- Eligible basis is the buildings adjusted basis as of the close of the 1st taxable year of the credit period

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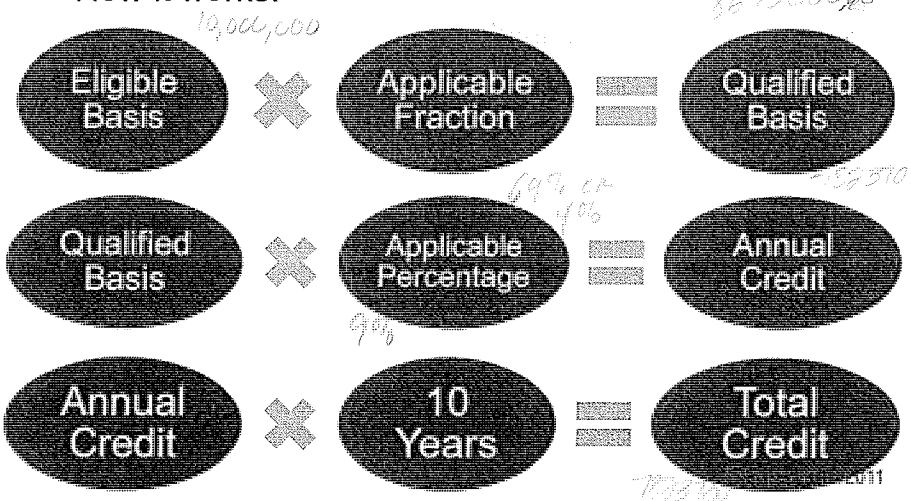
Eligible Basis

- How it works:



Eligible Basis

- Example
  - Parker Towne Apartments:
    - One building, 120 units
    - 80 two bedroom with 1050 sqft; 40 three bedroom with 1200 sqft
    - Of the 80 two bedrooms, 75 units are low-income; of the 40 three bedrooms, 30 are low-income units
    - 9% credit
    - Total Eligible Basis of $10,000,000

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Eligible Basis

- Calculate Applicable Fraction
  - What is the unit fraction?

170 UNITS / 105 LIHTC = 87.5% UNIT

2 - 84000 78750
3 - 48000 36000
132,000 114,750

86.93% S.F.

Revised 9/16/2011

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Eligible Basis

- What is the Square Footage Fraction

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Eligible Basis

- What we know:
  - Eligible Basis:
  - Applicable Fraction:
  - Credit Percentage: 9%

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Eligible Basis

- Do NOT convert common areas/units to commercial spaces
  - If common areas are rental units are converted to commercial space, the Guide does not offers a way for an owner to demonstrate that the property is back in compliance

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Eligible Basis and Fees

- Do Not charge a separate fee for facilities included in eligible basis:
  - Common Examples
    - Community Room
    - Swimming Pool
    - Garages
    - Covered Parking
    - Storage
  - Chapter 11, 8823 Audit Guide

Note: A deposit may be required for the usage of a Community Room, but if the area is left in good repair, deposit MUST be fully refunded to the household

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Fees

- Application Processing
  - Limited to the actual out-of-pocket cost to owner of checking tenant's income, credit history and landlord references
  - 10TAC§60.120(c) allows for an additional $5.50 per household

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Fees

- Example 1:
  - Oceanside Townhomes pays a company a flat fee of $200 per month to check credit and criminal
  - Based on applicant history, 10 applicants per month is expected
  - What is the actual out-of-pocket cost to the owner?
  - How much can be charged for an application fee?

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Fees

- Example 2:
  - Hammond Village is charged a flat rate of $15 to check credit and $3 to check criminal of a prospective tenant
  - Their monthly bill varies based on the number applicants
  - What is the actual out-of-pocket cost to the owner?

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Fees

- Provisions of Service
  - A service is optional when it is not a condition of occupancy and there is a reasonable alternative
    - Examples
      - Sure Deposit
      - Meals
      - Hair Salon

Note: The property can not charge the stylist a fee for the use of the salon because the cost of constructing the salon was included in eligible basis; however, the stylist can be held responsible for the utilities associated with the salon.

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Fees

- Contingency Fees are allowable
  - All of these types of fees are items that the resident does not have to pay unless they take or fail to take required action
  - Not included in the gross rent calculation
    - Examples
      - Late rent fee
      - Re-letting fee
      - Fee to replace a key

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Fees

- Fees as a Condition of Occupancy
  - Treasury Regulation §1.42-11(a)(3): the cost of services that are required as a condition of occupancy must be included in gross rent
  - Examples
    - Month-to-month fee
    - Mandatory renter's insurance
    - Utilities paid to the owner of the building where the billing type is based on an allocation formula or RUBS

Note: A fully refundable security deposit may be charged to cover, upon move out, expenses incurred above and beyond normal wear and tear

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Fees

- "Fees for preparing a unit for occupancy must not be charged; owners are responsible for physically maintaining LIHTC units in a manner suitable for occupancy"
- Failure to maintain fee requirements will result in a finding on noncompliance
  - Remains out of compliance for the taxable year in which the event occurred

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Module 5: Review

1. Can late rent fees be charged? Why?

2. True or False: Noncompliance from application fees will not result in a finding if the fee was refunded?

3. The development has carports and the cost to construct was included in Eligible Basis. Can a fee be charged for the carports?

4. The Department allows for an additional $5.50 to be added to the supportable application cost to cover administration cost. Is this amount allowable per household or per applicant?

5. Can the property charge month to month fees?

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Module 6

Recertifications
The Available Unit Rule
Addition of Household Members
Transfers

Recertifications

- 100% low-income projects do not need to annual recertify household income
  - Each household must complete the Annual Eligibility Certification (AEC) once a calendar year
  - Student status must be examined annually
  - 10TAC§60.111
- Definition of a project depends on the election made by the owner on line 8b of Form 8609

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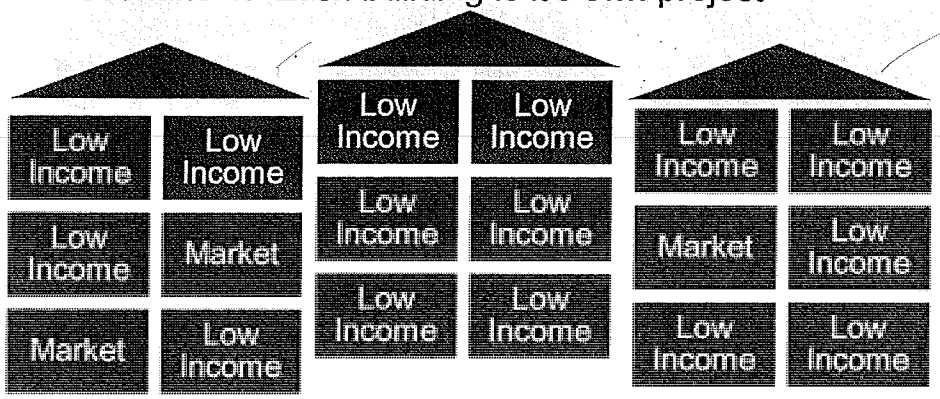
Recertifications

- Scenario 1: Each building is it's own project



Which building needs to be recertified on an annual basis?

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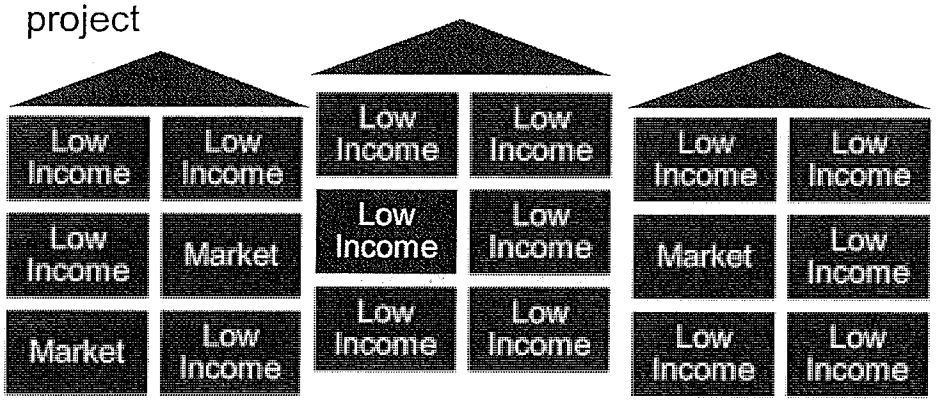
Recertifications

- Scenario 2: All buildings part of a multiple building project



Which building needs to be recertified on an annual basis?

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Recertifications

- Mixed Income Projects
  - Recertification must be completed annually by the anniversary of the household's move in date onto the project
  - Can begin the process 120 days prior to the original certification date
  - Follow the same steps as initial certification
    - Good practice to compare the current information with the last certification completed
    - Address any discrepancies

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Recertifications

May 1, 2010	• The Newman household moved in
May 1, 2011	• Annual recertification due
July 15, 2011	• Newman household failed to comply with management notices for and the recertification was not executed timely
May 1, 2012	• Recertification still due by May 1st every year thereafter

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Recertifications

- Evaluating household Eligibility at Recertification

Screen the household in the same manner as the initial certification

Compare total household income to the CURRENT income limits

If the household exceeds 140% of current income limit, redesignate as over-income (OI)

Follow the Available Unit Rule

Recertifications

- Calculating 140%

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Available Unit Rule

- §42(g)(2)(D) and Treasury Regulation 1.42-15:
  - When a household's income exceeds 140% of the current income limit at recertification, the unit is OI and the Available Unit Rule MUST be followed

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Available Unit Rule

- Available Unit Rule (AUR): A household that is OI at recertification maintains their low-income status as long as:
  1. The unit remains rent restricted
  2. Units of smaller or comparable size in the building are rented to eligible households until the building applicable fraction is achieved
- If the AUR rule is NOT followed, ALL OI units in the building lose their low-income status

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Available Unit Rule

- 100% low-income projects:
  - Owners that lack appropriate/sufficient due diligence will be unable to demonstrate compliance with the Available Unit Rule in the case of an IRS audit

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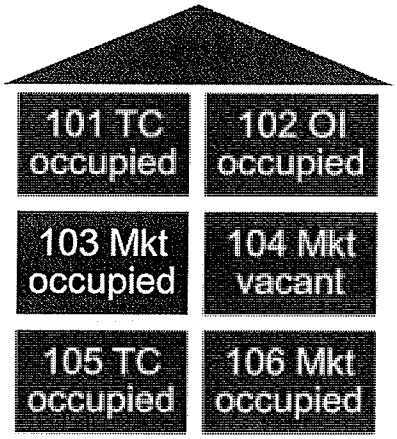
Available Unit Rule

- Mixed Income Project:
  - Applicable Fraction: 50%
  - What happens if unit 104 is not occupied by an eligible household?
  - What is the effect on the applicable fraction?



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Available Unit Rule

- How to correct when the Available Unit Rule is violated:
  - Noncompliance cannot be corrected by simply reoccupying the unit that triggered the violation
  - This issue is corrected when enough units are occupied by eligible households to satisfy the required applicable fraction
  - If an OI household experiences a decrease in income OR income limits increase, the unit can be certified under current circumstances

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Addition of Household Members

Step 1
- Screen new household and verify
- Add income to existing Income Certification and sign

Step 2
- If the total household income with the new member added exceeds 140% of income limit (OI), the unit is subject to the Available Unit Rule

Step 3
- Failure to screen, verify or add to the existing Income Certification the new household's income will result in a finding of noncompliance under "Household Income above Income Limit Upon Initial Occupancy"

Step 4
- Once all the original household members have moved out, owner action is required

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Addition of Household Members

- 100% Low Income Projects
  - If there are no remaining household members, the unit continues to qualify if the new person was independently income eligible at the time they joined the household

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Addition of Household Members

- Example:

April 15, 2009	• Mary and Jodi moved into a 100% low income project
May 1, 2010	• Maggie moved in with them • Maggie's income > 60% limit for 1 person
April 30, 2011	• Mary and Jodi move out

Can Maggie remain in the unit? NO

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Addition of Household Members

- Mixed Income Projects
  - If there are no remaining household members, the unit continues to qualify if
    - The newly created household was income qualified, or
    - The remaining tenants were independently income qualified at the time they moved into the unit

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Addition of Household Members

- Example:

April 1, 2008	• 4 person household moved in and qualified < 60% AMI
April 1, 2009 & April 1, 2010	• Annual recertification performed and household remained < 60% AMI for 4 person household
June 20, 2010	• Adult joined the household • Income screened, verified and added to existing Income Certification

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Addition of Household Members

Which Income Certification should the new members income be added?

Can the member added 6/20/2010 remain in the household if the existing household members move out?

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Transfers

- Households can transfer to any unit within the same 100% low income project
- Household's moving from one project to another project must be low income

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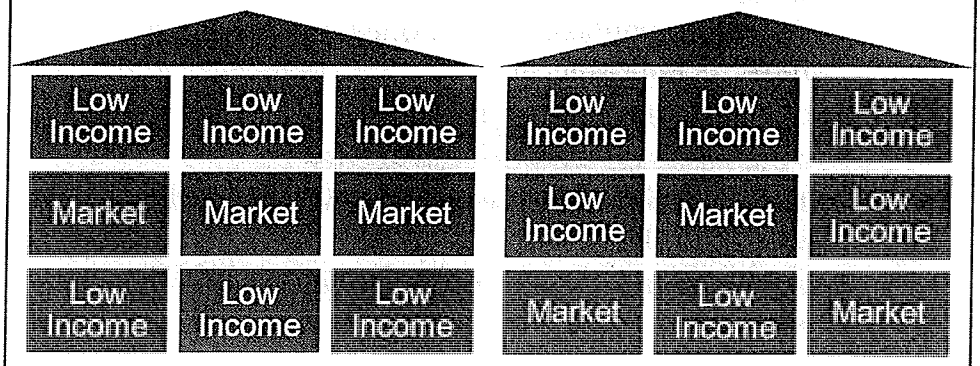
Transfers

- Scenario 1: Each building is its own project



Can household's transfer from one building to another?

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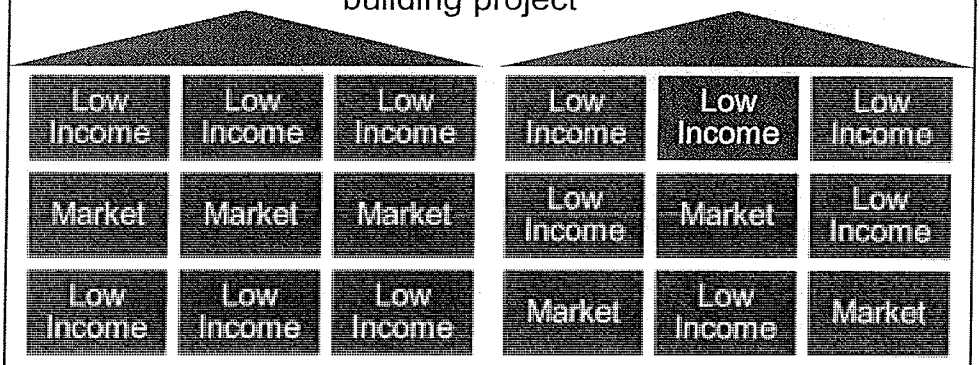
Transfers

- Scenario 2: All buildings part of a multiple building project



Can household's transfer from one building to another?

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Transfers

- Transfers within the same building
  - Allowed regardless of the household income at most recent certification
  - The two units swap status
    - One household CANNOT qualify 2 units
  - It is not necessary to certify the household at the time of transfer
  - Certification date follows the household NOT the unit

Revised 9/16/2011

Module 6: Review

1. 100% low income projects are required to complete what form once a calendar year? AEC

2. When are recertifications due on a mixed income project?

ANNIV. OF M/I

3. A household is considered Over Income (OI) when it exceeds what percentage of the current income limit? 140

4. Are households that transfer within the same project required to be certified at the time of transfer? NO

5. The owner can continue to claim tax credits on an OI unit as long as what 2 criterion are met?

HELD RESTRICTED PUT IN FOLLOWING

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Module 7

TDHCA Program Rules
Title 10, Chapter 60 of the Texas Administrative Code

TDHCA Program Rules

- 10TAC§60.110: Lease Requirements
  - The lease or lease addendums must include language
    - Prohibiting the eviction or termination of tenancy for other than good cause
    - Owners are prohibited from locking out or threatening to lock out any resident, or seizing or threatening to seize the personal property of a resident, except by judicial process, for the purposes of performing necessary repairs or construction work, or in cases of emergency

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TDHCA Program Rules

- 10TAC§60.111: Recertification requirements for 100% low income projects
  - Annual recertification no longer a requirement
  - Once a calendar year, must each household must execute the Annual Eligibility Certification (AEC)
  - If annual recertifications continue to be executed, the AEC must still be completed

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TDHCA Program Rules

- 10TAC§60.112: Managing Additional Rent & Occupancy Restrictions
  - Owners may elect to restrict a percentage of the units to 30%, 40% and/or 50% AMI
  - If applicable, these restrictions are recorded in the LURA
  - Household's maintain their designation from move in
    - Regardless of increase in income
    - Rent must remain restricted
    - When the household vacates, next unit in the project must be leased to a household at that designation

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TDHCA Program Rules

- Example: The Tyler household moved into Sea Side Village in 2010. Their income was less than the 30% limit and the owner opted to designate them as a 30%. In subsequent years, the Tyler household's income increases. The unit continues to count as a 30%, provided that the rent remains restricted at the 30% limit.

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TDHCA Program Rules

- Exception:
  - Mixed income projects must follow the Available Unit Rule when the household's income exceeds 140% of the maximum allowable limit

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TDHCA Program Rules

- 10TAC§60.113 Household Transfers
  - For 100% low income projects where all buildings are part of a multiple building project, when household's transfer within the project, the initial certification date for the household is the date the household moves into the project
  - The AEC is due once a calendar year from initial certification date, NOT the date of transfer

Revised 9/16/2011

TDHCA Program Rules

- Example:

May 1, 2008	• Household moved into unit 101
2009 and 2010	• AEC executed
February 1, 2011	• Household transferred to another unit within the project

When is the AEC next due?

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TDHCA Program Rules

- 10TAC§60.114(c) Prohibits developments from:
  - Denying occupancy to a household because the household participates in the Section 8 voucher program or HOME tenant based rental assistance program
  - Requiring a minimum income standard in excess of 2.5 times the tenant paid portion of monthly rent
  - Households may not be required to have a minimum income exceeding $2,500 per year

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TDHCA Program Rules

- 10TAC§60.114(d) Requires developments to
  - State in their leasing criteria that the development will comply with state and federal fair housing antidiscrimination laws
  - Apply screening criteria uniformly

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TDHCA Program Rules

Approve and distribute

Recommended HUD Form 935.2

10TAC§60.114(d)(3) Affirmative Marketing

Must identify methods to market to persons with disabilities

Reviewed annually and updated every 5 years

TDHCA Program Rules

- How to complete and implement an effective Affirmative Marketing Plan

Identify population least likely to apply

Ensure that population is actually represented within surrounding community

Implement marketing efforts to attract target population

Maintain documentation evidencing outreach

Regular marketing efforts do not satisfy affirmative marketing requirement

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TDHCA Program Rules

- 10TAC§60.116 Monitoring for Social Services
  - The services recorded in the LURA must be the specific services offered to the residents
    - If owner wishes to change the scope of services, prior approval is required
  - No fee may be charges to households for any of the services
  - Services must be provided on-site
    - If services off-site, transportation must be offered

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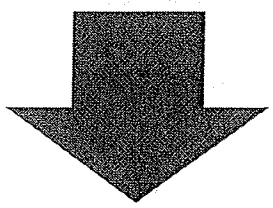
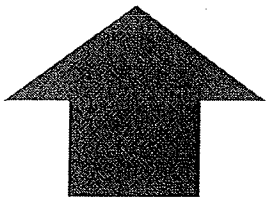
TDHCA Program Rules



Implement Supportive Service

8609's issued



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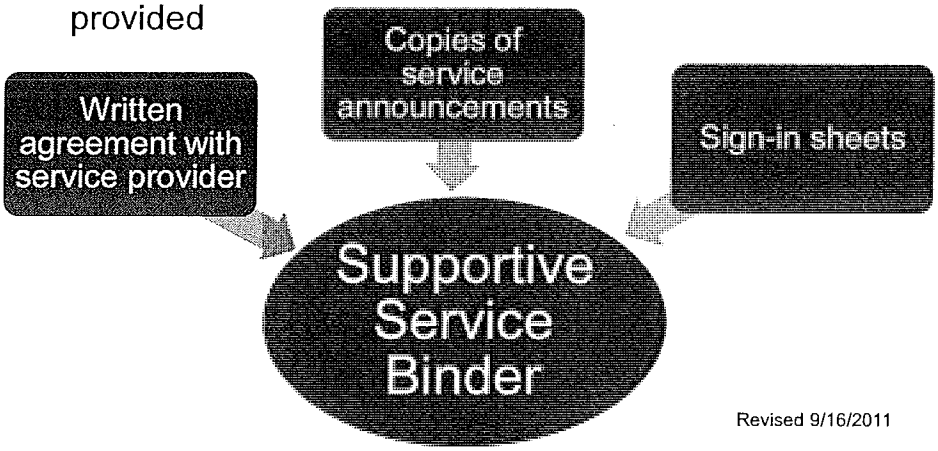
TDHCA Program Rules

- Owners are required to maintain sufficient documentation to evidence that the services are provided



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TDHCA Program Rules

- 10TAC§60.117 Non-profit or HUB Participation
  - If a LURA requires the material participation of a Non-profit or HUB, Department will confirm the requirement is met
    - Reviewed at onsite
    - Certifies to compliance with the requirement with the AOCR

No fee to TDHCA for this

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TDHCA Program Rules

Confirm Ownership

- Conduct a search on the Secretary of State website
- If unable to identify, will request documentation from owner

Confirm in Good Standing

- Secretary of State will confirm non-profit status
- Texas Comptroller of Public Accountants HUB Directory

Confirm Material Participation

- Owner must submit a narrative describing material participation
- Providing Supportive Services only is not sufficient

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* IRS RULING

TDHCA Program Rules

- Failure to comply with the Non-Profit requirement is reportable to the IRS on Form 8823
- Chapter 22, 8823 Audit Guide

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TDHCA Program Rules

- Special Needs Set-Aside
  - Some QAP's offered a selection criteria to owners the option to set-aside a specific percentage of units for households with Special Needs

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TDHCA Program Rules

- To maintain compliance
  - Eligibility must be documented
  - Must affirmatively market units to persons with Special Needs
  - If unable to occupy required percentage of units with eligible households
    - Must hold vacant units for the 12 month period following the date each building received the Certificate of Occupancy
  - If required, maintain a waitlist identifying qualified tenants

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Module 7: Review

1. For 100% low income projects that continue to perform annual recertifications, is the AEC Form still required? YES

2. What group must be selected on the Affirmative Marketing Plan?
DISAB.

3. How often must the Affirmative Plan be reviewed and updated?
ANNUAL 5 YRS

4. True or False: IRS Form 8609 will not be issued until all supportive services are implemented?

5. True or False: Only providing supportive services demonstrates material participation by a Non-profit?

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Module 8

Establishing Household Eligibility

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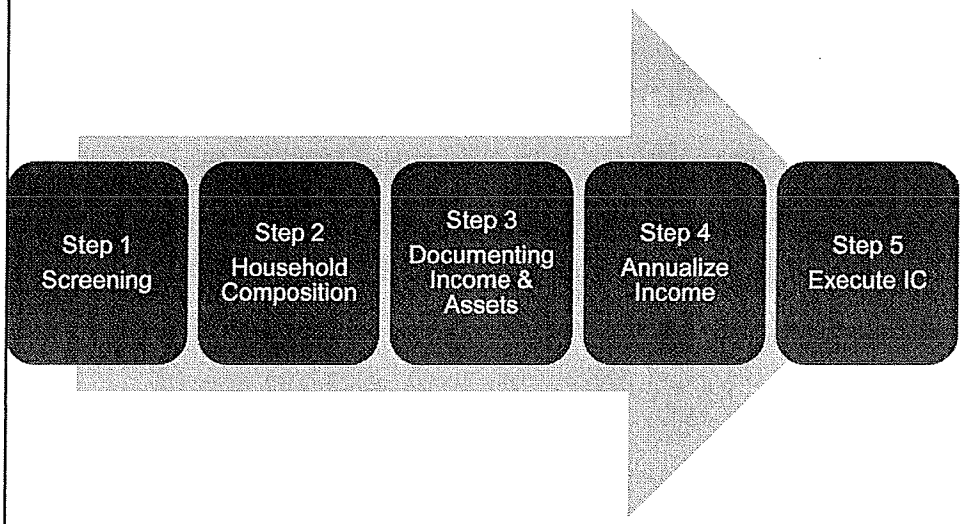
Establishing Household Eligibility



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Establishing Household Eligibility

- Step 1: Screening
  - Application
    - No required format/form
    - Conventional application does not gather sufficient information
      - Must use a supplemental application to ensure household screened for all sources of income/assets and student status
    - Review application
      - Does the household look eligible???

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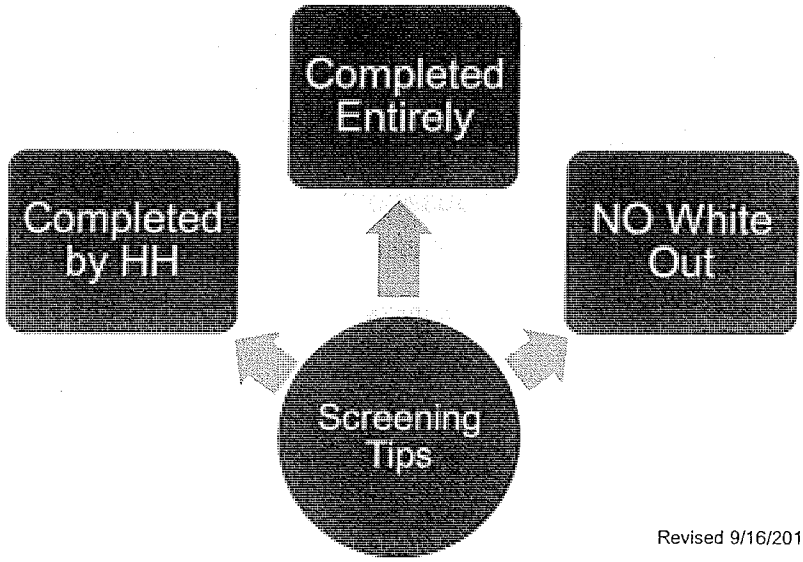
Establishing Household Eligibility



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Establishing Household Eligibility

- Step 2: Household Composition
  - Determine number of people in the household
  - Select income limit based on household size

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Establishing Household Eligibility

- Step 3: Documenting Income & Assets
  - Obtain Tenant Release and Consent
  - Document all sources of income and assets disclosed by the household on the application and maintain in the household file
    - Earned and unearned income of all adult household members
    - Unearned income of minors

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Establishing Household Eligibility

- Third Party Verifications
  - Sent directly from the property to a third party source via mail or fax
    - Faxes must include company name and fax number of the verification source
    - If mailed, maintain envelope in which the verification was returned
    - Applicant should not hand carry the verification to or from the source

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Establishing Household Eligibility

- First Hand Verifications
  - Paychecks
    - 10TAC§60.108 permits owners to use paycheck stubs
    - Not necessary to first attempt an employment verification as required by HUD 4350.3
    - Obtain enough check stubs to demonstrate frequency
    - Should be consecutive
  - Social Security Award Letters
  - Bank Statements

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Establishing Household Eligibility

- Oral Verifications
  - Great for clarifying incomplete verifications or discrepancies
  - Use a separate sheet of paper with the date, person with whom you spoke and title, time, issue clarified and your name and signature
    - Do not write on verification clarifying

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Establishing Household Eligibility

- Step 4: Annualizing Income
  - Household income is defined as the gross income (with no adjustments) the household anticipates it will receive in the 12 month period following the effective date of the certification
  - Maximum benefits and annualized payments should not be used unless the source of funds is expected to continue throughout the certification period for an indeterminable length of time

Revised 9/16/2011

Establishing Household Eligibility

- Step 5: Execute Income Certification (IC)

Department Approved Form

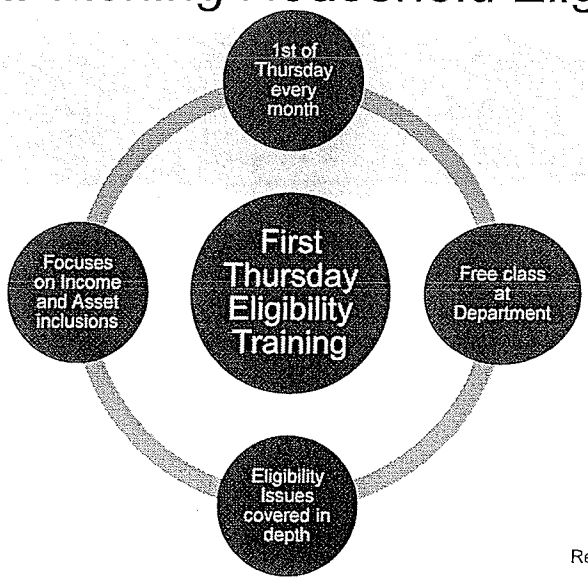
Staff Completes Certification	Verifications must be within 120 days of certification	Certification is signed by Household and Staff	New Certification available on TDHCA website

Establishing Household Eligibility

- Recommended Practices:
  - Before move-in is approved, conduct a peer review
  - To ensure consistency, state in Management Plan the procedures and methods used to calculate income
  - Spot check information verified
    - If discrepancies are found, best practice to obtain additional forms of verification for clarification

Revised 9/16/2011

Establishing Household Eligibility



Revised 9/16/2011

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Module 8: Review

1. True or False: Before check stubs are used to verify employment income, the owner must first attempt to obtain an employment verification?

2. Who should complete the application?

3. Is the earned income from a minor counted towards household income?

4. True or False: The applicant may hand carry a third party verification form to or from the source?

5. Who must sign the Income Certification form?

Revised 9/16/2011

Module 9

Student Eligibility

84

Student Eligibility

- Full Time Student
  - Defined as an individual who during each 5 calendar months is a full time student as an educational organization as defined in IRC§170(b)(a)(A)(ii)
  - Treasury Regulation §1.151-3(b) further provides that the 5 calendar months need not be consecutive
  - 8823 Audit Guide, Chapter 17

Revised 9/16/2011

Student Eligibility

- This issue requires looking backward at an applicant's student status for the beginning of calendar year (January 1st thru December 31st)
- Different than determining income and assets, as that requires anticipation from the date of certification forward

Revised 9/16/2011

85

Student Eligibility

- Example:

March & April 2010	• Individual attended school full time prior to occupying the unit
June 2010	• Otherwise qualifying low-income individual occupies a unit
September-December 2010	• Individual attends school full time
November 1, 2010	• The unit is out of compliance on the 1st day of the fifth month the individual attended school full time

Revised 9/16/2011

Student Eligibility

- A unit is also considered out of compliance if
  - The owner fails to verify the household's student status at the time of move in, or
  - Annual student status verification was performed late and after notification of state agency review

Revised 9/16/2011

86

Student Eligibility

- The unit will be considered back in compliance
  - When is no longer occupied by entirely by full time students, or
  - The tenant qualifies under one of the exceptions

Revised 9/16/2011

Student Eligibility

- Exceptions for units occupied by an individual full time student:
  1. The student received Temporary Assistance from Needy Families (TANF)
  2. The student was previously in foster care
  3. The student is enrolled in a job training program

Revised 9/16/2011

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Student Eligibility

- Exceptions for units occupied entirely by full time students:
  1. Married couples that file, or are entitled to file, a joint income tax return
  2. Single parents with children all of whom are students and such parents and children are not dependents of another individual
     - Neither parent or child can be a dependent of a third party, unless the children are a dependent of the non-custodial parent

Revised 9/16/2011

Student Eligibility

- Student status must be verified by the registrars office
- Full time status defined by the educational organization attended
- Status should be verified on a semester basis
- Best practice to verify part-time status

Revised 9/16/2011

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Module 9: Review

1. Student status is reviewed over a calendar or a fiscal year?

2. The household is comprised of 2 adult household members. Both the household members have been verified as full time students January through June. The head of household is not enrolled the remainder of the year and the co head is part time September through December. The household applies October 15th. Is this an eligible household?

3. To meet the student exception of a single parent with dependent children, which of the following is allowable?
   A. The grandparent may claim the children
   B. The sister may claim the children
   C. The non-custodial parent can claim the children
   D. All of the above

Revised 9/16/2011

Module 10

Onsite Monitoring

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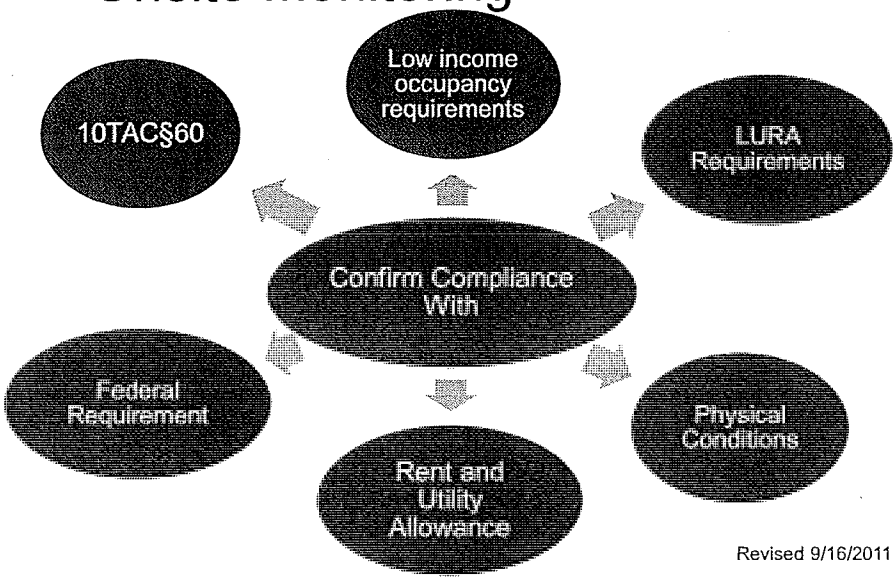
Onsite Monitoring



Revised 9/16/2011

Onsite Monitoring

- Notification sent to owner, management company and property via email and regular mail to the contacts in CMTS
- Unit Status Report (USR) and Entrance Interview Questionnaire must be submitted electronically through CMTS

Revised 9/16/2011

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Onsite Monitoring

- Additional Information Requested:
  - Affirmative Marketing Plan
  - Utility Allowance Documentation
  - Written Leasing Criteria
  - Waitlist Policy
  - Form 8609 with Part II completed for each building
  - Supporting documentation for application fee
  - Narrative explaining material participation of HUB and/or Non-Profit (as applicable)

Revised 9/16/2011

Onsite Monitoring

- Failure to submit requested documentation by the due date listed in the Notification letter will result in a finding of noncompliance

Revised 9/16/2011

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Onsite Monitoring

- During the monitoring review, Department staff will:
  - Review 20% of the low-income units
  - Limited accessibility inspection
  - Affirmative Marketing
  - Compliance with requirements in Appendix A of the LURA
  - Compliance Fees paid

Revised 9/16/2011

Onsite Monitoring

- Upon completion of the review, Department staff will conduct an Exit Interview
  - Explain the results of the review
    - Including any findings of noncompliance identified
  - Accessibility issues noted
  - Provide technical assistance
  - Make recommendations for improvement

Revised 9/16/2011

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Onsite Monitoring

- Monitoring Report
  - Sent to Owner, Management Company and Property
  - If there are findings of noncompliance identified, the report will explain the reasoning, units and expected corrective action
  - Corrective Action deadline established in report
    - 90 days after the date of notification

Revised 9/16/2011

Onsite Monitoring

- Preparing your response
  - For findings of noncompliance cited, the Findings Report will identify specific Supplemental Corrective Action required to correct the finding
  - Submit exactly what is requested
  - If requested documentation is not available, contact the monitor for further guidance

Revised 9/16/2011

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Onsite Monitoring

- If the findings of noncompliance cannot be corrected within the 90 day corrective action period:
  - Owner can request up to an additional 90 days
    - Must be requested before the end of the initial deadline
    - Request must be in writing to the Monitor

Revised 9/16/2011

Onsite Monitoring

- At the end of the Corrective Action Period
  - Findings of noncompliance will be reported to the IRS on Form 8823 (when applicable)
    - Must report all noncompliance whether corrected or not corrected
  - Scored in the Department's Issues of Noncompliance Scoring System

Revised 9/16/2011

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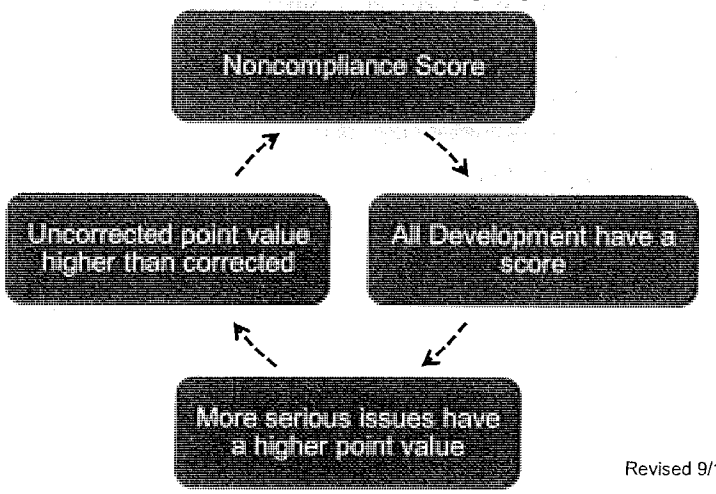
Onsite Monitoring

- If **ALL** findings of noncompliance are not corrected during the Corrective Action Period
  - The Owner will be referred to the Department's Administrative Penalty Committee
    - Will assess monetary penalties
    - See Penalty Table in 10TAC§60.309

Revised 9/16/2011

Onsite Monitoring

- Issues of Noncompliance Scoring Systems



Revised 9/16/2011

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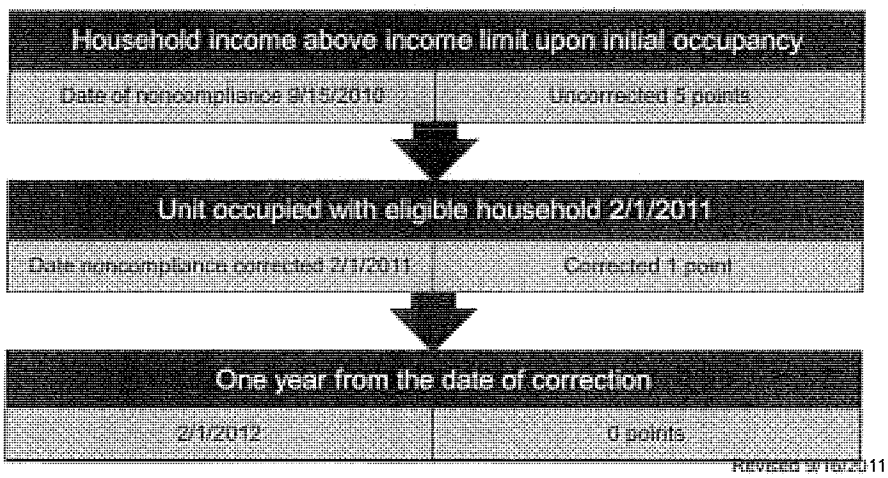
Onsite Monitoring

- Example:



Revised 9/16/2011

Onsite Monitoring

- Material Noncompliance
  - Equal to or exceeds 30 points
  - Owners in Material Noncompliance
    - Not eligible for additional funding
    - Subject to monetary penalties
  - 10TAC§60.123

Revised 9/16/2011

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Onsite Monitoring

- Uniform Physical Condition Standard (UPCS) will be performed in conjunction with the onsite monitoring review
- The review, usually, will be conducted on a different day than the file review
- Will be notified by an Inspection Specialist from the Department or one of the Department's contractors

Revised 9/16/2011

Onsite Monitoring

- Inspector will inspect
  - 20% of the low-income units
  - All buildings
  - Site as a whole
- All low-income households must be notified at least 24 hours before scheduled inspection that their unit may be inspected

Revised 9/16/2011

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Onsite Monitoring

- Additional information can be found on the TDHCA website under Support & Services, Compliance and Asset Oversight, Inspections
- UPCS Training available through TAA

Revised 9/16/2011

Module 10: Review

1. When will the noncompliance score for a finding of noncompliance drop to zero?

2. True or False: A finding of noncompliance will be assessed if the pre-audit documentation is not submitted?

3. How long is the standard corrective action period?

4. When the property reaches what score is it considered to be in Material Noncompliance?

Revised 9/16/2011

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Module 11

Record Retention

Record Retention

- All household files should contain:
  - Application
  - Income and Asset Verification
  - Student Verification (when applicable)
  - Income Certification Form
  - Lease and Lease Addendums
    - Minimum 6 month initial lease term
  - Note(s) to file

Revised 9/16/2011

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Record Retention

- Files for households that initially qualified unit as qualified tax credit unit:
  - Must be maintained for 21 years from date tax return filed
- Files for all subsequent households
  - Must be maintained for 6 years beyond tax return filed

Revised 9/16/2011

Record Retention

- Compliance Monitoring Tracking System (CMTS)
  - Found on TDHCA website Support & Services, Compliance and Asset Oversight, Online Reporting
  - To obtain a username/password complete:
    - Electronic Compliance Reporting Filing Agreement
    - Owner's Designation of Administrator of Accounts
    - Unit/Building Set-up spreadsheet

Revised 9/16/2011

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Record Retention

- Reports:
  - Unit Status Reports (USR)
    - Household specific information
    - Should be updated on a regular basis
  - Annual Owners Compliance Report (AOCR)
    - Certified that the development complied with all HTC requirements during the year
    - Part's A, B and C due by March 1st
    - Part D due by April 30th
  - Interview Entrance Questionnaire
  - Quarterly Vacancy Reports

Revised 9/16/2011

Module 11: Review

1. How long must the initial move in files that qualified the tax credit unit be maintained?

2. Who is responsible for updating contact information in CMTS?

3. True or False: Your property is required to submit a Quarterly Vacancy Report?

4. When are Parts A, B and C of the Annual Owners Compliance Report (AOCR) due?

5. What is the minimum initial lease term?

Revised 9/16/2011

ANNUAL ELIGIBILITY CERTIFICATION
Housing Tax Credits (HTC), TCAP and Exchange Only

Property Name: _____ County: _____ BIN# _____ Effective Date: _____

TDHCA# _____ Unit#: _____ # Bedrooms: _____ Move-in Date: _____

*Transfer from unit: _____

The Texas Department of Housing and Community Affairs (TDHCA) requests this information in order to comply with HUD's required reporting requirements. Although TDHCA would appreciate receiving this information, you may choose not to furnish it. You may not be discriminated against on the basis of this information, or on whether or not you choose to furnish it. If you do not wish to furnish this information, please initial below.

RESIDENT/APPLICANT: I do not wish to furnish information regarding **ethnicity, race, sex, date of birth, elderly and disabled.**
(Initials) _____

If you choose not to furnish ethnicity, race, sex, age and other, the Household Member name and Student Status must still be completed.

HH Mbr #	Household Member Full Name	Relationship to head of household	Student Status *(circle one)*	Sex M or F	Date of Birth (MM/DD/YY)	Ethnicity	Race	Elderly Enter Y or N	Disabled Enter Y or N	Last 4 digits of Social Security Number
1		HEAD	PT / FT / NA							
2			PT / FT / NA							
3			PT / FT / NA							
4			PT / FT / NA							
5			PT / FT / NA							
6			PT / FT / NA							
7			PT / FT / NA							

The following ethnicity codes should be used:
A Hispanic
B Not Hispanic

The following Race codes should be used:
A White
B Black/African American
C Asian
D American Indian/Alaska Native
E Native Hawaiian/Other Pacific Islander
F American Indian/Alaska Native & White
G Asian & White
H Black/African American & White
I American Indian/Alaska Native & Black/African American
J Other Multi Racial

See Definitions Page for explanation of Codes

Student Status: ARE ALL OCCUPANTS FULL-TIME STUDENTS? ☐ Yes ☐ No

A full time student is defined as one who attends an educational institution full time for any part of 5 months in a calendar year (the five calendar months need not be consecutive)

If yes, Enter student explanation*
(also attach documentation) Enter 1-5

*** Student Explanation:**
1. TANF assistance
2. Job Training Program
3. Single parent/dependent child
4. Married/joint return
5. Previously in Foster Care

Does the household receive rental assistance under the Section 8 program or a similar assistance in paying rent? ☐ Yes ☐ No

If yes, how much is the assistance? $ _____

A. Total Tenant Paid Rent: $ _____ C. Other non-optional or mandatory fees: $ _____ E. Maximum Rent Limit: $ _____

B. Utility Allowance: $ _____ D. Gross Rent for Unit $ _____ **D = A + B + C for HTC, TCAP and Exchange**

Unit meets rent restriction: ☐ 30% ☐ 40% ☐ 50% ☐ 60%

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature _____ Date _____ Signature _____ Date _____

Signature _____ Date _____ Signature _____ Date _____

Revised April 2011

INSTRUCTIONS FOR COMPLETING ANNUAL ELIGIBILITY CERTIFICATION

Development Data

Property Name	Enter the name of the development.
TDHCA #	Enter the assigned Program Number.
County	Enter the county (or equivalent) in which the building is located.
Unit Number	Enter the unit number.
BIN #	Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).
# Bedrooms	Enter the number of bedrooms in the unit.
Effective Date	Enter the date executed by the tenant (the date signed).
Move-in Date	Enter the date the tenant took occupancy of the unit.

Household Composition

List all occupants of the unit: Include the student status, sex, date of birth, ethnicity, race, elderly, disabled, and last 4 digits of Social Security Number/alien registration number for each occupant.

State each household member's relationship to the head of household by using one of the following coded definitions:

H	-	Head of Household	S	-	Spouse
A	-	Adult co-tenant	O	-	Other family member
C	-	Child	F	-	Foster child(ren)/adult(s)
L	-	Live-in caretaker	N	-	None of the above

If there are more than 7 occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Student Status

If all household members are full time* students, check "yes." If at least one household member is not a full time student, check "no."

If "yes" is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit. **Full time as determined by the academic institution.*

Rent

Rent Assistance	Check the box indicating if any monthly rental assistance is received from a welfare agency. Enter the amount of rental assistance, if any.
Tenant Paid Rent	Enter the amount the tenant pays toward rent as listed on the lease contract (not including rent assistance payments such as Section 8).
Utility Allowance	Enter the utility allowance for utilities paid by the tenant to the utility provider. If the owner pays all utilities, enter zero.
Other non-optional charges	Enter the amount of non-optional charges, such as applicable utilities paid to/through the owner of the building, mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges. (D=A+B+C)
Maximum Rent Limit for this unit	Enter the maximum rent limit for the appropriate bedroom size.
Unit Meets Rent Restriction	Check the appropriate rent restriction that the unit meets according to what is required by the set asides for project.

Household Certification and Signatures

Each household member age 18 or older must sign and date the Annual Eligibility Certification.

Items in grey are to be completed by property staff. Property staff is responsible for ensuring that all items are complete. The responsibility of documenting and determining eligibility is extremely important and should be conducted by someone well trained in program compliance.

INCOME CERTIFICATION

☐ Initial Certification ☐ Recertification ☐ Other* _____

Effective Date: _____
Move-in Date: _____ (MM/DD/YYYY)
*Transfer from Unit: _____

PART I – DEVELOPMENT DATA

Property Name: _____ County: _____ BIN #: _____
TDHCA #: _____ Unit Number: _____ # Bedrooms: _____

PART II. HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	Student Status *(circle one)*	Last 4 digits of Social Security Number
1			HEAD		FT / PT / NA	
2					FT / PT / NA	
3					FT / PT / NA	
4					FT / PT / NA	
5					FT / PT / NA	
6					FT / PT / NA	
7					FT / PT / NA	

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	$	$	$	$

Add totals from (A) through (D) above — TOTAL INCOME (E): $

PART IV. INCOME FROM ASSETS

HH Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
		TOTALS:	$	$

Enter Column (H) Total If over $5000 $ _____ X Passbook Rate 2.00% = (J) Imputed Income $

Enter the greater of the total of column I, or J: imputed income — TOTAL INCOME FROM ASSETS (K) $

(L) Total Annual Household Income from all Sources [Add (E) + (K)] $

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature _____ *(Date)* _____ Signature _____ *(Date)* _____

Signature _____ *(Date)* _____ Signature _____ *(Date)* _____

PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page 1 $ _____

Mark the program(s) listed below for which this household's income will be counted toward the property's occupancy requirements.

☐	HTC or Exchange	☐	30%	☐	40%	☐	50%	☐	60%	☐	OI***	
☐	TCAP	☐	30%	☐	40%	☐	50%	☐	60%	☐	OI***	
☐	HOME	☐	30%	☐	40%	☐	50%	☐	60%	☐	80%	☐ OI***
☐	BOND	☐	30%	☐	50%	☐	60%	☐	80%	☐	OI***	☐ ET
☐	HTF	☐	ELI	☐	VLI	☐	LI	☐	OI***			
☐	NSP	☐	30%	☐	40%	☐	50%	☐	60%	☐	80%	☐ 120%
☐	CDBG	☐	30%	☐	40%	☐	50%	☐	60%	☐	80%	☐ 120%
☐	Other _____	☐										

*** Upon Recertification household was determined to be over income (OI) according to eligibility requirements of the programs marked above.

PART VI. RENT

A. Tenant Paid Rent: $ _____

B. Utility Allowance: $ _____

C. Rent Assistance: $ _____

D. Other non-optional charges and mandatory fees: $ _____

E. Gross Rent For Unit (See Instructions): $ _____ / _____

Mark the program(s) listed below for which this household's rent will be counted toward the property's occupancy requirements.

☐	HTC or Exchange	☐	30%	☐	40%	☐	50%	☐	60%
☐	TCAP	☐	30%	☐	40%	☐	50%	☐	60%
☐	HOME	☐	Low HOME	☐	High HOME	☐	_____		
☐	BOND	☐	30%	☐	50%	☐	60%	☐	80%
☐	HTF	☐	30%	☐	50%	☐	60%	☐	80%
☐	NSP	☐	30%	☐	40%	☐	Low HOME	☐	High HOME
☐	CDBG	☐	30%	☐	40%	☐	Low HOME	☐	High HOME
☐	Other _____	☐	_____						

PART VII. STUDENT STATUS (HTC, TCAP, Exchange, and BOND only)

ARE ALL OCCUPANTS FULL TIME STUDENTS?

☐ Yes ☐ No

If yes, Enter student explanation* (also attach documentation)

Enter 1-5

*Student Explanation:
1. TANF assistance
2. Job Training Program
3. Single parent/dependent child
4. Married/joint return
5. Previous Foster Care

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of program's rules, regulations and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

_____ _____

SIGNATURE OF OWNER/REPRESENTATIVE DATE

Supplement to the Income Certification

Unit #: _____ Date: _____

See below for Ethnicity, Race, and Other codes that characterize household composition. **Enter both Ethnicity and Race** codes for each household member, if applicable. Also indicate if an individual in the household is elderly and/or disabled.

HH Mbr #	Sex – enter M or F	Age	Ethnicity	Race	Elderly Enter Y or N	Disabled Enter Y or N
1						
2						
3						
4						
5						
6						
7						

The Texas Department of Housing and Community Affairs (TDHCA) requests this information in order to comply with HUD's required reporting requirements. Although TDHCA would appreciate receiving this information, you may choose not to furnish it. You may not be discriminated against on the basis of this information, or on whether or not you choose to furnish it. If you do not wish to furnish this information, please initial below.

RESIDENT/APPLICANT: I do not wish to furnish information regarding ethnicity, race, sex, age and other household composition.
(Initials) _____

The following Ethnicity codes should be used:	The following Race codes should be used:
A Hispanic	A White
B Not Hispanic	B Black/African American
	C Asian
	D American Indian/Alaska Native
	E Native Hawaiian/Other Pacific Islander
	F American Indian/Alaska Native & White
	G Asian & White
	H Black/African American & White
	I American Indian/Alaska Native & Black/African American
	J Other Multi Racial

DEFINITIONS

Ethnic categories:

A. Hispanic – A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Terms such as "Latino" or "Spanish Origin" apply to this category.

B. Not Hispanic – A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

Racial categories:

A. White – A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

B. Black/African American – A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" apply to this category.

C. Asian – A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

D. American Indian/Alaskan Native – A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

E. Native Hawaiian/Other Pacific Islander – A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Note: The remaining racial categories (F-I) are multi racial categories made up of combinations of the single race categories defined above (A-E). If the appropriate multi-racial category is not listed, use the "Other Multi Racial" (J) category.

Disabled:

- A physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. For a definition of "physical or mental impairment" and other terms used in this definition, please see 24 CFR 100.201.
- "Handicap" does not include current, illegal use of or addiction to a controlled substance.

INSTRUCTIONS FOR COMPLETING
INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I - Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If a household transfers from a unit, enter the unit number the household transferred from in the area below the Move-in Date.

Move-in Date	Enter the date the tenant has or will take occupancy of the unit.
Effective Date	For initial move-ins and certification, the effective date is the date of move-in. For annual recertification, the effective date should be the anniversary of the original move-in date. The tenant must execute the certification no more than 120 days prior to the effective date. If the certification is performed late, the effective date is the date the tenant executes the income certification. ***NOTE: Verifications must be valid (ie: Dated no more than 120 days prior to the effective date of the certification).***
Property Name	Enter the name of the development.
County	Enter the county (or equivalent) in which the building is located.
BIN #	Enter the Building Identification Number (BIN) assigned to the building (for Housing Tax Credit (HTC), Exchange and TCAP programs--from IRS Form 8609).
TDHCA #	Enter the assigned Program Number.
Unit Number	Enter the unit number.
# Bedrooms	Enter the number of bedrooms in the unit.

Part II - Household Composition

List all occupants of the unit. State each household member's relationship to the head of household by using one of the following coded definitions:

H	-	Head of Household	S	-	Spouse
A	-	Adult co-tenant	O	-	Other family member
C	-	Child	F	-	Foster child(ren)/adult(s)
L	-	Live-in caretaker	N	-	None of the above

Enter the date of birth, student status, and last 4 digits of the Social Security number/Alien Registration number for each occupant. Student Status as determined by the academic institution.

If there are more than 7 occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Part III - Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms or first-hand documentation obtained from each income source, enter the gross amount anticipated to be received for the twelve months from the effective date of the (re)certification. List the respective household member number from Part II and complete a separate line for each income-earning member.

Column (A)	Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment, distributed profits and/or net income from a business.
Column (B)	Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
Column (C)	Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, etc.).

Column (D)	Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
Row (E)	Add the totals from columns (A) through (D), above. Enter this amount.

Part IV - Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms or first-hand documentation obtained from each asset source, list the gross amount anticipated to be received during the twelve months from the effective date of the (re)certification. List the respective household member number from Part II and complete a separate line for each member.

Column (F)	List the type of asset (i.e., checking account, savings account, etc.).
Column (G)	Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
Column (H)	Enter the cash value of the respective asset.
Column (I)	Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
TOTALS	Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than $5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value of Assets, multiply by 2% and enter the amount in (J), Imputed Income.

Row (K)	Enter the greater of the total in Column (I) or (J).
Row (L)	Total Annual Household Income From all Sources. Add (E) and (K) and enter the total.

HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Income Certification. For move-in, it is recommended that the Income Certification be signed no earlier than 120 days prior to the effective date of the certification.

Part V – Determination of Income Eligibility

Total Annual Household Income from all Sources	Enter the number from item (L).
Program Type	Mark the program(s) for which this household's unit will be counted toward the property's occupancy requirements. If the property does not participate in the affordable housing program, leave those sections blank.
Household Meets Income Restriction at:	Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.

Part VI - Rent

Tenant Paid Rent	Enter the amount the tenant pays toward rent as listed on the lease contract (not including rent assistance payments such as Section 8).
Utility Allowance	Enter the utility allowance for utilities paid by the tenant to the utility provider. If the owner pays all utilities, enter zero.
Rent Assistance	Enter the amount of monthly rental assistance payments paid directly to the development from a welfare agency, if any.
Other non-optional charges	Enter the amount of non-optional charges, such as applicable utilities paid to/through the owner of the building based on RUBS or an allocation formula,

	mandatory garage/carport rent, charges for services provided by the development, etc.
Gross Rent for Unit	For **HOME, NSP and CDBG**, enter the total of the Tenant Paid Rent, plus Utility Allowance, plus Rent Assistance and other non-optional charges. (A+B+C+D=E) For **HTC, TCAP, Exchange, HTF** and **Tax-Exempt Bond**, enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges/mandatory fees. (A+B+D=E) If a property is layered an area has been provided to report the different gross and maximum rents. (___/____)
Program Type	Mark the program(s) for which this household's unit will be counted toward the property's occupancy requirements. If the property does not participate in the affordable housing program, leave those sections blank.
Unit Meets Rent Restriction at:	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

Part VII - Student Status – HTC, TCAP, Exchange and Tax Exempt Bond Programs Only

If all household members are full time* students, check "yes". If at least one household member is not a full time student, check "no".

If "yes" is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

*A full time student is defined as one who attends an educational institution full time for any part of 5 months in a calendar year (the five calendar months need not be consecutive). *Full time is determined by the school the student attends.*

SIGNATURE OF OWNER/REPRESENTATIVE

It is the responsibility of the owner or the owner's representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in program compliance.

These instructions should not be considered a complete guide on program compliance. The responsibility for compliance with federal and state program regulations lies with the owner of the property.

Form **8609**
(Rev. December 2008)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

▶ See separate instructions.

OMB No. 1545-0988

Part I Allocation of Credit

Check if: ☐ Addition to Qualified Basis ☐ Amended Form

A Address of **building** (do not use P.O. box) (see instructions)

B Name and address of **housing credit agency**

C Name, address, and TIN of **building owner** receiving allocation

TIN ▶

D Employer identification number of agency

E Building identification number (BIN)

1a	Date of allocation ▶ / / b Maximum housing credit dollar amount allowable	1b	
2	Maximum applicable credit percentage allowable (see instructions)	2	%
3a	Maximum qualified basis	3a	
b	If the eligible basis used in the computation of line 3a was increased, check the applicable box and enter the percentage to which the eligible basis was increased (see instructions) ☐ Building located in the Gulf Opportunity (GO) Zone, Rita GO Zone, or Wilma GO Zone ☐ Section 42(d)(5)(B) high cost area provisions	3b	1 _ _ %
4	Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.)	4	%
5	Date building placed in service ▶ / /		

6 Check the boxes that describe the allocation for the building (check those that apply):

a ☐ Newly constructed and federally subsidized b ☐ Newly constructed and **not** federally subsidized c ☐ Existing building
d ☐ Sec. 42(e) rehabilitation expenditures federally subsidized e ☐ Sec. 42(e) rehabilitation expenditures **not** federally subsidized
f ☐ Not federally subsidized by reason of 40-50 rule under sec. 42(i)(2)(E) g ☐ Allocation subject to nonprofit set-aside under sec. 42(h)(5)

Signature of Authorized Housing Credit Agency Official—Completed by Housing Credit Agency Only

Under penalties of perjury, I declare that the allocation made is in compliance with the requirements of section 42 of the Internal Revenue Code, and that I have examined this form and to the best of my knowledge and belief, the information is true, correct, and complete.

▶ Signature of authorized official ▶ Name (please type or print) ▶ Date

Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period

7	Eligible basis of building (see instructions)	7	
8a	Original qualified basis of the building at close of first year of credit period	8a	
b	Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?	☐ Yes	☐ No
9a	If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)?	☐ Yes	☐ No
b	For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low income units under section 42(d)(3)(B)? ▶	☐ Yes	☐ No

10 Check the appropriate box for each election:

Caution: *Once made, the following elections are irrevocable.*

a Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)) ▶ ☐ Yes ☐ No
b Elect **not** to treat large partnership as taxpayer (section 42(j)(5)) ▶ ☐ Yes
c Elect minimum set-aside requirement (section 42(g)) (see instructions) ☐ 20-50 ☐ 40-60 ☐ 25-60 (N.Y.C. only)
d Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions) ☐ 15-40

Under penalties of perjury, I declare that the above building continues to qualify as a part of a qualified low-income housing project and meets the requirements of Internal Revenue Code section 42. I have examined this form and attachments, and to the best of my knowledge and belief, they are true, correct, and complete.

▶ Signature ▶ Taxpayer identification number ▶ Date

▶ Name (please type or print) ▶ Tax year

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 63981U Form **8609** (Rev. 12-2008)

Form **8823**
(Rev. November 2009)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition

Note: *File a separate Form 8823 for each building that is disposed of or goes out of compliance.*

OMB No. 1545-1204

Check here if this is an amended return ▶ ☐

1 Building name (if any). Check if item 1 differs from Form 8609 ▶ ☐

Street address

City or town, state, and ZIP code

2 Building identification number (BIN)

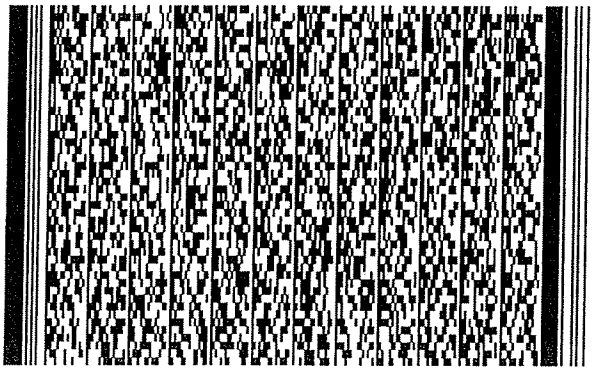
3 Owner's name. Check if item 3 differs from Form 8609 ▶ ☐

Street address

City or town, state, and ZIP code

4 **Owner's** taxpayer identification number ☐ EIN ☐ SSN

IRS Use Only



5 Total credit allocated to this BIN . . . . . ▶ $

6 If this building is part of a multiple building project, enter the number of buildings in the project . . . . . ▶

7 a Total number of residential units in this building . . . . . ▶

b Total number of low-income units in this building . . . . . ▶

c Total number of residential units in this building determined to have noncompliance issues . . . . . ▶

d Total number of units reviewed by agency (see instructions) . . . . . ▶

8 Date building ceased to comply with the low-income housing credit provisions (see instructions) (MMDDYYYY) . .

9 Date noncompliance corrected (if applicable) (see instructions) (MMDDYYYY) . . . . . .

10 Check this box if you are filing only to show correction of a previously reported noncompliance problem . . . . . ▶ ☐

11 Check the box(es) that apply:	Out of compliance	Noncompliance corrected
a Household income above income limit upon initial occupancy	☐	☐
b Owner failed to correctly complete or document tenant's annual income recertification	☐	☐
c Violation(s) of the UPCS or local inspection standards (see instructions) (attach explanation)	☐	☐
d Owner failed to provide annual certifications or provided incomplete or inaccurate certifications	☐	☐
e Changes in Eligible Basis or the Applicable Percentage (see instructions)	☐	☐
f Project failed to meet minimum set-aside requirement (20/50, 40/60 test) (see instructions)	☐	☐
g Gross rent(s) exceed tax credit limits	☐	☐
h Project not available to the general public (see instructions) (attach explanation)	☐	☐
i Violation(s) of the Available Unit Rule under section 42(g)(2)(D)(ii)	☐	☐
j Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(ix)	☐	☐
k Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J)	☐	☐
l Low-income units occupied by nonqualified full-time students	☐	☐
m Owner did not properly calculate utility allowance	☐	☐
n Owner has failed to respond to agency requests for monitoring reviews	☐	☐
o Low-income units used on a transient basis (attach explanation)	☐	☐
p Building is no longer in compliance nor participating in the section 42 program (attach explanation)	☐	
q Other noncompliance issues (attach explanation)	☐	☐

12 Additional information for any item above. Attach explanation and check box . . . . . ▶ ☐

13 a Building disposition by ☐ Sale ☐ Foreclosure ☐ Destruction ☐ Other (attach explanation)

b Date of disposition (MMDDYYYY)

c New owner's name

d **New owner's** taxpayer identification number ☐ EIN ☐ SSN

Street address

14 Name of contact person

City or town, state, and ZIP code

15 Telephone number of contact person

( ) Ext.

Under penalties of perjury, I declare that I have examined this report, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete.

▶ Signature of authorizing official ▶ Print name and title ▶ Date (MMDDYYYY)

For Paperwork Reduction Act Notice, see instructions.

Cat. No. 12308D Form **8823** (Rev. 11-2009)

Affirmative Fair Housing Marketing Plan

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

OMB Approval No. 2529-0013
(exp. 11/30/2006)

1a. Applicant's Name, Address (including city, state & zip code) & Phone Number	1c. Project/Application Number	1d. Number of Units
	1e. Price or Rental Range From $ To $	1f. For Multifamily Housing Only ☐ Elderly ☐ Non-Elderly
	1g. Approximate Starting Dates (mm/dd/yyyy) Advertising Occupancy	

1b. Project's Name, Location (including city, State and zip code)	1h. Housing Market Area	1i. Census Tract
	1j. Managing/Sales Agent's Name & Address (including City, State and Zip Code)	

2. **Type of Affirmative Marketing Plan** (check all that apply)

☐ MFH Plan ____ New ____Updated
☐ SFH Plan
___ White (non-minority) Area ____ Minority Area
___ Mixed Area (with _____ % minority residents)

3. **Direction of Marketing Activity** (Indicate which group(s) in the housing market area are least likely to apply for the housing because of its location and other factors without special outreach efforts)

☐ White ☐ American Indian or Alaskan Native ☐ Asian
☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander
☐ Hispanic or Latino ☐ Persons with Disabilities ☐ Families with Children

Marketing Program: Commercial Media (Check the type of media to be used to advertise the availability of this housing)

☐ Newspapers/Publications ☐ Radio ☐ TV ☐ Billboards ☐ Other (specify)

Name of Newspaper, Radio or TV Station	Group Identification of Readers/Audience	Size/Duration of Advertising

4b. **Marketing Program: Brochures, Signs, and HUD's Fair Housing Poster**

(1) Will brochures, letters, or handouts be used to advertise? ☐ Yes ☐ No If "Yes", attach a copy or submit when available.

(2) For project site sign, indicate sign size _____ x _____; Logo type size _____ x _____. Attach a photograph of project sign or submit when available.

(3) HUD's Fair Housing Poster must be conspicuously displayed wherever sales/rentals and showings take place. Fair Housing Posters will be displayed in the ☐ Sales/Rental Office ☐ Real Estate Office ☐ Model Unit ☐ Other (specify)

4c. **Community Contacts.** To further inform the group(s) least likely to apply about the availability of the housing, the applicant agrees to establish and maintain contact with the groups/organizations listed below that are located in the housing market area. If more space is needed, attach an additional sheet. Notify HUD-Housing of any changes in this list. Attach a copy of correspondence to be mailed to these groups/organizations. (Provide all requested information.)

Name of Group/Organization	Group Identification	Approximate Date (mm/dd/yyyy)	Person Contacted or to be Contacted

Address & Phone Number	Method of Contact	Indicate the specific function the Group/Organization will undertake in implementing the marketing program

5. **Future Marketing Activities** (Rental Units Only) Mark the box(s) that best describe marketing activities to fill vacancies as they occur after the project has been initially occupied.

☐ Newspapers/Publications ☐ Radio ☐ TV

☐ Brochures/Leaflets/Handouts

☐ Site Signs ☐ Community Contacts ☐ Other(specify)

6. **Experience and Staff Instructions** (See instructions)

6a. Staff has experience. Yes No

6b. On separate sheets, indicate training to be provided to staff on Federal, State and local fair housing laws and regulations, as well as this AFHM Plan. Attach a copy of the instructions to staff regarding fair housing.

7. **Additional Considerations** Attach additional sheets as needed.

8. **Review and Update** By signing this form, the applicant agrees to review their AFHM Plan every 5 years and updte as needed to ensure continued compliance with HUD's Affirmative Fair Housing Marketing Regulations (24 CFR 200.620).

Signature of person submitting this Plan & Date of Submission (mm/dd/yyyy)

Name (type or print)

Title & Name of Company

For HUD-Office of Housing Use Only	For HUD-Office of Fair Housing and Equal Opportunity Use Only
Reviewing Official:	Approved ____ Disapproval _____ (Check One)
Signature & Date (mm/dd/yyyy)	Signature & Date (mm/dd/yyyy)
Name (type or print)	Name (type or print)
Title	Title

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Affirmative Fair Housing Marketing (AFHM) Plan is needed to ensure that insured and subsidized developers are taking necessary steps to eliminate criminatory practices involving Federally insured and subsidizes housing. No application for any housing project or subdivision insured or subsidized under the Department of Housing and Urban Development's (HUD) housing programs can be funded without an approved AFHM Plan (See the "Applicability" section in the instructions below.) The responses are required to obtain or retain a benefit under the Fair Housing Act, Section 808(e)(5) & (6) and 24 CFR Part 200, Subpart M. The form contains no questions of a confidential nature.

Applicability: This form is to be completed by all insured or subsidized: (1) multifamily projects; and (2) single-family homebuilders that can not meet at least one of the following requirements: (a) is a signatory in good standing to a Voluntary Affirmative Marketing Agreement (VAMA); (b) has a HUD approved AFHM Plan; (c) has contracted with someone to market their houses who has an AFHM Plan or is a signatory to a VAMA; or (d) can self certify compliance with HUD's AFHM Regulations, maintain records of their AFHM activities and make the records available to HUD upon request. Single-family homebuilders that can meet at least one of the above requirements can complete block 11 on form HUD-92541-Builder's Certification of Plans, Specifications, & Site instead of completing the AFHM Plan. [See HUD Mortgagee Letters 1995-18 dated April 28, 1995 and 2001-09 dated April 2, 2001]

Each applicant is required to carry out an affirmative program to attract prospective buyers or tenants of all minority and non-minority groups in the housing market area regardless of their race, color, religion, sex, national origin, disability, or familial status. Racial groups include White, Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian or Other Pacific Islander. Other groups in the housing market area who may be subject to housing discrimination include, but are not limited to, Hispanic or Latino, persons with disabilities, or families with children. The applicant shall describe in the AFHM Plan the proposed activities to be carried out during advance marketing, where applicable, and the initial sales and rent-up period. The affirmative marketing program also should ensure that any group(s) of persons ordinarily **not** likely to apply for this housing without special outreach (See Part 3), know about the housing, feel welcome to apply and have the opportunity to buy or rent.

INSTRUCTIONS

Send completed form to: your local HUD Office
Attention: Director, Office of Housing

Part 1-Applicant and Project Identification. Blocks 1a thru 1f-Self-Explanatory. Block 1g-the applicant should specify the approximate date for starting marketing activities to the groups targeted for special outreach and the anticipated date of initial occupancy (if unoccupied). Block 1h-the applicant should indicate the housing market area, in which the housing will be (is) located. Block 1i - the applicant may obtain census tract location information from local planning agencies, public libraries and other sources of census data. Block 1j the applicant should complete only if a Managing/Sales Agent (the agent can not be the applicant) is implementing the AFHM Plan.

Part 2-Type of Affirmative Marketing Plan: Applicants for multifamily housing projects should check both the MFH (Multifamily Housing) Plan and indicate the status of the AFHM Plan, e.g. new or update. As appropriate single-family homebuilders who submit an AFHM , should check the SFH (Single-family Housing) Plan box.

All Plans should indicate the racial composition of the housing market area in which the housing will be (is) located by checking one of the three choices. Single-family scattered site builder should submit an SFH Plan that reflects the racial composition of each the housing market area in which the housing will be (is) located. For example, if a builder plans to construct units in both minority and non-minority housing market areas, a separate AFHM Plan shall be submitted for each housing market area.

Part 3-Direction of Marketing Activity. Indicate which group(s) the applicant believes are least likely to apply for this housing without special outreach. Consider factors such as price or rental of housing, sponsorship of housing, racial/ethnic characteristics of housing market area in which housing will be (is) located, disability or familial status of eligible population, public transportation routes, etc.

Part 4-Marketing Program. The applicant shall describe the marketing program to be used to attract all segments of the eligible population, especially those groups designated in Part 3 of this AFHM Plan as least likely to apply. The applicant shall state: the type of media to be used, the names of newspaper/call letters of radio or TV stations; the identity of the circulation or audience of the media identified in the AFHM Plan (e.g., White, Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian or Other Pacific Islander, Hispanic or Latino, persons with disabilities, and families with children) and the size or duration of newspaper advertising or length and frequency of broadcast advertising. Community contacts include individuals or organizations that are well known in the housing market area or the locality, that can influence persons within groups considered least likely to apply. Such contacts may include, but need not be limited to: neighborhood, minority and women's organizations, grass root faith-based or other community based organizations, labor unions, employers, public and private agencies, disability advocates, schools and individuals who are connected with these organizations and/or are well-known in the community. Applicants should notify their local HUD–Office of Housing of any changes to the list in Part 4c of this AFHM Plan.

Part 5-Future Marketing Activities. Self-Explanatory.

Part 6-Experience and Staff Instructions.

6a. The applicant should indicate whether the sales/rental staff have had previous experience in marketing housing to group(s) identified as least likely to apply for the housing.

6b. Describe the instructions and training provided or to be provided to sales/rental staff. This guidance to staff must include information regarding Federal, State and local fair housing laws and this AFHM Plan.

Copies of any written materials should be submitted with the AFHM Plan, if such materials are available.

Part 7-Additional Considerations. In this section describe other groups to which the housing may be marketed and efforts not previously mentioned which are planned to attract persons least likely to apply for the housing. Such efforts may include outreach activities to grass root faith-based or other community based organizations, and other ethnic groups with limited English proficiency (LEP).

Part 8-Review and Update. By signing, the applicant assumes full responsibility for the AFHM Plans implementation and required reviews and updates. HUD may monitor the implementation of this AFHM Plan at any time and request modification in its format or content, where deemed necessary.

Notice of Intent to Begin Marketing. No later than 90 days prior to the initiation of sales or rental marketing activities, the applicant of an approved AFHM Plan shall submit notice of intent to begin marketing. The notification is required by the Affirmative Fair Housing Marketing Plan Compliance Regulations (24 CFR Part 108.15). It is submitted either orally or in writing to the Office of Housing in the appropriate HUD Office servicing the locality in which the proposed housing will be located.

OMB approval of the Affirmative Fair Housing Plan includes approval of this notification procedure as part of the AFHM Plan. The burden hours for such notification are included in the total designated for this AFHM Plan form.

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TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 60	COMPLIANCE ADMINISTRATION
SUBCHAPTER A	COMPLIANCE MONITORING
RULE §60.101	**Purpose and Overview**

Historical Texas Register

(a) This chapter satisfies the requirement of §42(m)(1)(B)(iii) Internal Revenue Code (Code) to provide a procedure that will be followed for monitoring for noncompliance with the provisions of the Code and to notify the Internal Revenue Service ("IRS") of such noncompliance. This chapter is consistent with requirements established under applicable state and federal laws, rules, and regulations, and the Department will monitor in accordance with this chapter. Nothing in this chapter serves to waive, alter, or amend the requirements of any duly recorded Land Use Restriction Agreement ("LURA"). A party to a LURA wishing to have the LURA amended must submit a formal request to the Department, and the Department will review any such request to determine if it is acceptable and, if acceptable, specify any appropriate requirements for or conditions or limitations on any such amendment. The Department monitors rental Developments receiving assistance under:

(1) the Housing Tax Credit program ("HTC");

(2) the HOME Investment Partnerships program ("HOME");

(3) the Tax Exempt Bond program ("BOND");

(4) the Housing Trust Fund program ("HTF");

(5) the Community Development Block Grant Disaster Recovery program ("CDBG");

(6) the Tax Credit Assistance Program ("TCAP");

(7) the Tax Credit Exchange Program ("Exchange"); and

(8) the Neighborhood Stabilization Program ("NSP").

(b) All Developments monitored by the Department are subject to the Department's enforcement rules, found in Subchapter C of this chapter (relating to Administrative Penalties).

(c) Compliance monitoring begins with the commencement of construction and continues to the end of the long term Affordability Period. The Compliance and Asset Oversight ("CAO") Division monitors to ensure Owners comply with the program rules and regulations, Chapter 2306, Texas Government Code, the LURA requirements and conditions, and representations imposed by the Application or award of funds by the Department. This chapter does not address forms and other records that may be required of Development Owners by the IRS or other governmental entities, whether for purposes of filing annual returns or supporting Development Owner tax positions during an IRS or other governmental audit.

Source Note: The provisions of this §60.101 adopted to be effective February 14, 2011, 36 TexReg 768

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TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 60	COMPLIANCE ADMINISTRATION
SUBCHAPTER A	COMPLIANCE MONITORING
RULE §60.102	**Definitions**

Historical Texas Register

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms not defined herein are defined in §1.1 of this title (relating to Definitions for Housing Program Activities).

(1) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement ("LURA") or federal regulation, or commences on the first day of the Compliance Period as defined by §42(i)(1) in the United States Internal Revenue Code of 1986 and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure. The Department reserves the right to extend the Affordability Period for HOME Developments that fail to meet program requirements. During the Affordability Period the Department shall monitor to ensure compliance with programmatic rules, regulations, and Application representations.

(2) Architect of Record--The architect licensed in the jurisdiction that the project is located in, who prepares, stamps and signs the construction documents, and is legally recorded as the architect for the project.

(3) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(4) Extended Use Period--With respect to a HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) the date specified in the Land Use Restriction Agreement; or

(B) the date which is fifteen (15) years after the close of the Compliance Period.

(5) Housing Quality Standards ("HQS")--The property condition standards described in 24 CFR §982.401 in the Code of Federal Regulations.

(6) HTC Development--Sometimes referred to as "HTC Property." A Development using Housing Tax Credits allocated by the Department.

(7) U.S. Department of Housing and Urban Development ("HUD")-regulated Building--The rents and utility allowances of the building are reviewed by HUD on an annual basis.

(8) Material Noncompliance.

(A) A HTC or Exchange Development located within the state of Texas will be classified by the Department as being in Material Noncompliance status if the noncompliance score for such Development is equal to or exceeds a threshold of 30 points in accordance with the Material Noncompliance provisions, methodology, and point system in §60.123(l) and (m) of this chapter (relating to Material Noncompliance Methodology).

(B) Non-HTC Developments monitored by the Department with 1 - 50 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 30 points. Non-HTC Developments monitored by the Department with 51 - 200 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 50 points. Non-HTC Developments monitored by the Department with 201 or more Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 80 points.

(C) For all programs, a Development will be in Material Noncompliance if the noncompliance is stated in §60.123 of this chapter to be Material Noncompliance.

(9) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(10) Owner--An individual, joint venture, partnership, limited partnership, trust, firm, corporation, limited liability company, other form of business organization or cooperative that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing Development, subject to the regulatory powers of the Department and other terms and conditions.

(11) Commencement of Substantial Construction--

(A) The minimum activity necessary to meet the requirements of Commencement of Substantial Construction for new construction Developments will be defined as:

(i) delivery of an executed partnership agreement with the investor or other documents setting for the legal structure and ownership;

(ii) delivery of the executed construction loan and construction loan agreement;

(iii) fifty percent completion of all onsite "wet" utilities (water, sanitary sewer, and storm sewer plus natural gas (if applicable) and building slab and foundation formwork started);

(iv) having all infrastructure permits;

(v) all grading completed (not including landscaping);

(vi) all Right of Way access; and

(vii) ten percent of the construction contract amount for the Development expended, adjusted for any change orders and certified by the Architect of Record.

(B) The minimum activity necessary to meet the requirement of Commencement of Substantial Construction for rehabilitation Developments will be defined as having:

(i) building permits issued or a clearance from the City stating that building permits are not required;

(ii) certification that all project documents, material and work items necessary to start and complete the project in the allotted time period have been adequately addressed as of the date of the certification; and

(iii) certification that work is progressing on at least 20 percent of the units or buildings.

(12) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than one-hundred twenty (120) square feet. *Example 102(1):* A two bedroom/one bath Unit is considered a different Unit Type than a two bedroom/two bath Unit. A three bedroom/two bath Unit with 1,000 square feet is considered a different Unit Type than a three bedroom/two bath Unit with 1,200 square feet. A one bedroom/one bath Unit with 700 square feet will be considered equivalent to a one bedroom/one bath Unit with 800 square feet.

(13) UPCS--Uniform Physical Condition Standards as developed by the Real Estate Assessment Center of HUD.

Source Note: The provisions of this §60.102 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.103	**Construction Monitoring**

Historical Texas Register

(a) The Department will monitor the entire construction phase for all applicable requirements according to the level of risk. After Final Construction during the Affordability Period, the Department will periodically monitor the Development to assure that the initial compliance review was correct.

(b) The Department will not provide any funding to any Development unless the Owner certifies that the housing Development is, or will be upon completion of construction, in compliance with the following housing laws:

(1) state and federal fair housing laws, including Chapter 301, Property Code, the Texas Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601, et seq.), and the Fair Housing Amendments of 1988 (42 U.S.C. §§3601, et seq.);

(2) the Civil Rights Act of 1964 (42 U.S.C. §§2000a, et seq.);

(3) the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101, et seq.); and

(4) Section 504, Rehabilitation Act of 1973 (29 U.S.C. §§701, et seq.). (§2306.257)

(c) Evidence of Commencement of Substantial Construction must be submitted no later than the deadline established in the Development's Commitment Notice. Four percent BOND Developments are not required to submit evidence of Commencement of Substantial Construction.

(d) Copies of any construction reports supplied to a syndicator must be supplied to the Department upon request.

(e) Copies of any reports issued during construction that indicate changes that affect the representations made during the Application process must be supplied to the Department upon request.

(f) Owners are required to submit evidence of final construction within thirty (30) days of completion in a format prescribed by the Department. In addition, the Architect of Record must submit a certification that the Development was built in compliance with all applicable laws and the Engineer of Record (if applicable) must submit a certification that the Development was built in compliance with the design requirements.

(g) The Department will conduct a final inspection after receipt of notification of final construction. During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable laws referenced in subsection (b) of this section. In addition, a UPCS inspection may be completed.

(h) Owners will be provided a written notice after the final inspection. If any deficiencies are noted, a ninety (90) day corrective action period will be provided.

(i) Forms 8609 and final retainage will not be released until the Owner receives written notice from the Department that all noted deficiencies have been resolved.

(j) During any construction inspection, if the Owner and the Department are unable to agree that an identified issue is a violation, the Owner must request Alternative Dispute Resolution ("ADR"). The process for engaging ADR is outlined in §60.125 of this chapter.

Source Note: The provisions of this §60.103 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.104	**Recording of Land Use Restriction Agreements (HTC Properties)**

Historical Texas Register

(a) In general, no credit is allowable for a building unless there is a properly executed LURA in effect at the end of the first year of the Credit Period. A draft of the proposed LURA must be provided no later than September 1st of the calendar year in which the Owner intends to have it recorded. The Department cannot guarantee that a draft LURA received after September 1st will be processed in the same calendar year.

(b) LURAs will impose the rent and income restrictions identified in the Development's final underwriting report.

(c) The Department will not issue Forms 8609 until it receives the original, properly recorded LURA or has alternative arrangements, acceptable to the Department and its counsel, in place.

Source Note: The provisions of this §60.104 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.105	**Reporting Requirements**

Historical Texas Register

(a) The Department requires reports to be submitted electronically through the Department's web-based Compliance Monitoring and Tracking System ("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 filed no later than September 1st of the year following the award. The Department will provide general instruction regarding the electronic transfer of data. Under special circumstances, the Department may, at its discretion, waive the online reporting requirements where a hardship can be demonstrated. In the absence of a written waiver, all Developments are required to submit reports online.

(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. For example, if a Development is awarded funds in calendar year 2007, the first report is due in 2009. The AOCR is comprised of four sections:

(1) Part A "Owner's Certification of Program Compliance." All Development Owners must annually certify to compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules. In addition, Owners are required to report on the race and ethnicity, family composition, age, income, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance. HTC Developments during the Compliance Period will also be required to provide the name and mailing address of the syndicator in the Annual Owner's Compliance Report;

(2) Part B "Unit Status Report." All Developments must annually report the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations;

(3) Part C "Housing for Persons with Disabilities." The Department must 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 questions on Part C satisfy this requirement; and

(4) Part D "Owner's Financial Certification." Developments funded by the Department must annually provide the data requested in the Owner's Financial Certification.

(c) Parts A, B and C of the Annual Owner's Compliance Report must be provided to the Department no later than March 1st of each year, reporting data current as of December 31st of the previous year (the reporting year). Part D, "Owner's Financial Certification," which includes the current audited financial statements and income and expenses of the Development for the prior year, must be submitted to the

Department no later than the last day of April each year.

(d) Any Development for which the AOCR, Part A, "Owner's Certification of Program Compliance," is not received or is received past the due date will be considered not in compliance with this section. If Part A is incomplete, improperly completed, or is not submitted by the Development Owner, it will be considered not received and not in compliance with this section. The Department will report to the IRS on Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, any HTC Development that fails to comply with this requirement.

(e) Department staff will review Part A of the AOCR for compliance with the requirements of the appropriate program. If it appears that the Development is not in compliance based upon the report, the Owner will be given written notice and provided a corrective action period to clarify or correct the report. If the Owner does not respond to the notice, the report will be subject to the sanctions listed in subsections (f) and (g) of this section.

(f) If any required section, or sections (Parts A, B, C or D), of the report are not received on or before the deadline for submission specified in subsection (c) of this section, a notice of noncompliance will be sent to the Owner, specifying a corrective action deadline. If the report is not received on or before the corrective action deadline, the Department shall:

(1) For all HTC Developments, issue Form 8823 notifying the IRS of the violation; and

(2) For all Developments, score the noncompliance in accordance with §60.123 of this chapter (relating to Material Noncompliance Methodology).

(g) The Department may assess and enforce the following sanctions against an Owner who fails to submit the AOCR on or before March 1st of each year and has multiple, consistent, and/or repeated violations of failure to submit the AOCR by March 1st of each year:

(1) a late processing fee in the amount of $1,000; and/or

(2) a HTC Development that fails to submit the required AOCR for three (3) consecutive years may be reported to the IRS as no longer in compliance and never expected to comply.

(h) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status report to the Department through the CMTS. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must show 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. The first quarterly report is due January 10th.

(i) 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 require all Developments to provide current occupancy data through CMTS.

(j) All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

(k) Exchange developments must submit form 8609 with lines 7, 8(b), 9(b), 10(a), 10(c) and 10(d) thirty (30) days after the Department issues the executed form(s).

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RULE §60.106	**Record Keeping Requirements**

Historical Texas Register

(a) Development Owners must comply with program recordkeeping requirements. Records must include sufficient information to comply with the reporting requirements of §60.105 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. In general, retention schedules include but are not limited to the provision of subsections (c) - (f) 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 HOME rental Developments and the CDBG Disaster Recovery program must comply with the provisions of 24 CFR §92.508(c), which generally requires retention of rental housing records for five years after the Affordability Period terminates.

(e) Housing Trust Fund (HTF) 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 (5) years after the Affordability Period terminates.

(f) Other rental Developments funded or administered in whole or in part by the Department must comply with record retention requirements as required by rule or deed restriction.

Source Note: The provisions of this §60.106 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.107	**Notices to the Department**

Historical Texas Register

(a) If any of the events in paragraphs (1) - (3) of this subsection occur, written notice must be provided to the Department within the timeframes as shown in paragraphs (1) - (3) of this subsection:

(1) Any sale, transfer, or exchange of the Development or any portion of the Development. Notification must be provided at least thirty (30) days prior to this event;

(2) The Development suffers in whole or in part a casualty loss. Notification must be provided within thirty (30) days following the event of loss 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); and

(3) Owners of Bond Developments shall notify the Department of the date 10 percent of the Units are occupied and the date 50 percent of the Units are occupied within ninety (90) days of such dates.

(b) Owners are responsible for maintaining current information (including contact persons, physical addresses, mailing addresses, email addresses, and phone numbers) for the Ownership entity and management company in the Department's Compliance Monitoring and Tracking System ("CMTS"). Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely on the information supplied by the Owner in CMTS to meet this requirement.

Source Note: The provisions of this §60.107 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.108	**Determination, Documentation and Certification of Annual Income**

Historical Texas Register

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program, using the definitions of annual income described in HUD Handbook 4350.3 as amended from time to time. 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.

(b) 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 as required by the HUD 4350.3.

(c) The Department requires the use of the TDHCA 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.

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RULE §60.109	**Utility Allowances**

Historical Texas Register

(a) The Department will monitor to determine if HTC, HOME, BOND, HTF, CDBG, NSP, TCAP, and Exchange properties comply with published rent limits which include an allowance for tenant paid utilities. For HTC, TCAP and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company, and the amount of the bill is based on an allocation method or "ratio utility billing system" (RUBS), this monthly amount will be considered a mandatory fee. For HTC, TCAP and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company, and the amount of the bill is based on the tenant's actual consumption, Owner may account for the utility in an allowance. The rent, plus all mandatory fees, plus an allowance for those utilities paid by the resident directly to a utility provider, must be less than the allowable limit. For HOME, BOND, HTF, NSP, and CDBG buildings, Owners may account for utilities paid directly to the Owner or to a third party billing company in their utility allowance. Where residents are responsible for some, or all, of the utilities--other than telephone, cable, and internet--Development Owners must use a utility allowance that complies with both this section and the applicable program regulations. An Owner may not change utility allowance methods without written approval from the Department. Any such request must include the Utility Allowance Questionnaire found on the Department's website.

(b) Rural Housing Services ("RHS") buildings or buildings with RHS assisted tenants. 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 tenants.

(c) HUD-Regulated buildings layered with any Department program. If neither the building nor any tenant in the building receives RHS rental assistance payments, and the rents and the utility allowances of the building are reviewed by HUD on an annual basis (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.

(d) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the following methods:

(1) The utility allowance established by the applicable Public Housing Authority ("PHA") for the Section 8 Existing Housing Program. The Department will utilize Texas Local Government Code Chapter 392 to determine which PHA is the most applicable to the Development. 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 109(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 consist of twenty buildings, ten of which are

Apartments (5+ units) and the other ten buildings are Duplexes. The Owner must use the correct schedule for each building type. In the event the PHA publishes a utility allowance schedule specifically for energy efficient units, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency on an ongoing basis. If the property is located in an area that does not have a municipal, county or regional housing authority that publishes a utility allowance schedule for the Section 8 Existing Housing Program, Owners must select an alternative methodology. 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. If an Owner chooses to implement a methodology as described in paragraph (2), (3), (4), or (5) of this subsection, 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.

(2) A written estimate from a local utility provider. If there are multiple utility companies that service the Development, the local provider must be a residential utility company that offers service to the residents of the Development requesting the methodology. The Department will use the Texas Electric Choice website: http://www.powertochoose.org/ to verify the availability of service. If the utility company is not listed as a provider in the Development's ZIP code, the request will be denied. Additionally, the estimate must be signed by the utility provider representative and specifically include all "component charges" for providing the utility service. Receipt of the information from the utility provider begins the ninety (90) day period after which the new utility allowance must be used to compute gross rent.

(3) The HUD Utility Model Schedule. A utility estimate can be calculated by using the "HUD Utility Model Schedule" that can be found at http://www.huduser.org/portal/resources/utilmodel.html (or successor Uniform Resource Locator). The rates used must be no older than the rates in effect sixty (60) days prior to the beginning of the ninety (90) day period in which the Owner intends to implement the allowance. For Owners calculating a utility allowance under this methodology, the model, along with all back-up documentation used in the model, must be submitted to the Department, on a CD, within the timeline described in subsection (f) of this section. The date entered as the "Form Date" on the "Location" tab of the spreadsheet will be the date used to begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent.

(4) An energy consumption model. The utility consumption estimate must be calculated by a properly licensed mechanical engineer or an individual holding a valid Residential Energy Service Network ("RESNET") or Certified Energy Manager ("CEM") certification. 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 orientation, design and materials, mechanical systems, appliances, and characteristics of building location. The ninety (90) day period after which the new utility allowance must be used to compute gross rent will begin sixty (60) days after the end on the last month of the twelve (12) month period for which data was used to compute the estimate.

(5) 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 rates, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method."

(e) For a Development Owner to use the Actual Use Method they must:

(1) provide a minimum sample size of usage data for at least five (5) Continuously Occupied Units of

each Unit Type or 20 percent of each Unit Type whichever is greater. *Example 109(2):* A Development has twenty three bedroom/one bath Units, and eighty (80) three bedroom/two bath Units. Each bedroom/bathroom equivalent Unit is within 120 square feet of the same floor area. Data must be supplied for at least five of the three bedroom/one bath Units, and sixteen of the three bedroom/two bath Units. If there are less than five Units of any Unit Type, data for 100 percent of the Unit Type must be provided;

(2) scan the information in subparagraphs (A) - (E) of this paragraph onto a CD and submit it to the Department no later than the beginning of the ninety (90) day period in which the Owner intends to implement the allowance, reflecting data no older than sixty (60) days prior to the ninety (90) day implementation period. *Example 109(3):* The utility provider releases the information regarding electric usage at Westover Townhomes on February 5, 2010. The data provided is from February 1, 2009 through January 31, 2010. The Owner must submit the information to the Department no later than March 31, 2010 for the information to be valid;

(A) 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 actual kilowatt usage for each Unit for which data was obtained, and the rates in place at the time of the submission;

(B) A copy of the request to the utility provider (or billing entity for the utility provider) to provide usage data;

(C) 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;

(D) 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;

(E) Documentation of the current utility allowance used by the Development;

(3) 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 following guidelines:

(A) If data is obtained for more than 20 percent or five (5) of each Unit Type, all data will be used to calculate the allowance;

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

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

(D) 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;

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

(4) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in paragraph (2) of this subsection.

(5) Receipt of approval from the Department will begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent; and

(6) For newly constructed Developments or Developments that have Units which have not been continuously occupied, the Department, on a case by case basis, may use consumption data for Units of similar size and construction in the geographic area to calculate the utility allowance;

(f) Effective dates. If the Owner uses the methodologies as described in subsection (b), (c), or (d)(1) of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due ninety (90) days after the change. For methodologies as described in subsection (d)(2) - (5) of this section, 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 ninety (90) day period in which the Owner intends to implement the utility allowance. With the exception of the methodology described in subsection (d)(5) of this section, if a response is not received from the Department within the ninety (90) day period, the Owner may temporarily use the submission as a safe harbor until the Department provides written authorization (the Owner cannot assume that the allowance is approved by the Department but can operate in good faith prior to notification). Failure to submit the proposed utility allowance to the Department and make it available to the residents will result in a finding of noncompliance.

(g) Requirements for Annual Review. Owners utilizing the methods described in subsections (b) and (c) of this section must demonstrate that the utility allowance has been reviewed annually. Any change in the method described in subsection (d)(1) of this section can be implemented immediately, but must be implemented for rent due ninety (90) days after the change. Owners utilizing the methods described in subsection (d)(2) - (5) of this section must submit to the Department, once a calendar year, copies of the utility estimate and simultaneously make the estimate available to the residents by posting the estimate in a common area of the leasing office at the Development. Changes in utility allowances cannot be implemented until the estimate has been submitted to the Department and made available to the residents by posting in the leasing office for a ninety (90) day period. The back-up documentation required by the methodology the Owner has chosen must be submitted to the Department for approval no later than October 1st; however, the Department encourages Owners to submit documentation prior to the October 1st deadline in order to ensure that the Department has adequate time to review and respond to the Owner's estimate.

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RULE §60.110	**Lease Requirements (HTC and HOME Developments)**

Historical Texas Register

(a) For HTC Developments, Revenue Ruling 2004-82 prohibits the eviction or termination of tenancy of low income households for other than good cause throughout the entire Affordability Period, and for three (3) years after termination of an extended low-income housing commitment. Owners executing or renewing leases after November 1, 2007 shall 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.

(b) For HOME Developments, the HOME Final Rule prohibits Owners 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, or for other good cause. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. Owners executing or renewing leases after November 1, 2007 shall specifically state 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).

(c) The Department does not determine if an Owner has good cause or if a resident has violated the lease terms. If there is a challenge to a good cause eviction, that determination will be made by a court of competent jurisdiction or an agreement of the parties in arbitration. The Department will rely on the court decision or the agreement of the parties.

(d) HTC and BOND Developments 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, or seizing or threatening to seize the personal property of a resident, except by judicial process, for the purposes of performing necessary repairs or construction work, or in cases of emergency. These prohibitions must be included in the lease or lease addendum.

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RULE §60.111	**Annual Recertification for All Programs and Student Requirements for HTC, Exchange, TCAP and BOND Developments**

Historical Texas Register

(a) Recertification Requirements for 100 percent low income HTC, Exchange and TCAP Developments:

(1) Regardless of the requirements stated in a LURA, the Department will not monitor to determine if 100 percent low income HTC Developments perform annual income recertifications. Households will maintain the designation they had at initial certification;

(2) To comply with HUD reporting requirements, once every calendar year, the Development must collect a self certification from each household that reports the following: the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). In addition, the self certification will collect information about student status to establish ongoing compliance with the HTC program. The Development must collect this self certification information on the Department's Annual Eligibility Certification form (AEC) and must maintain the certification in all household files; and

(3) One-Hundred percent low income HTC Developments that continue to complete annual income recertifications are required to obtain the AEC form described above and maintained it in all household files. The Department will not review recertification documentation during a monitoring review unless noncompliance is identified with the initial certification. Failure to complete the AEC form will result in a noncompliance finding under, "Failure to maintain or provide Annual Eligibility Certification" and scored in the Department's Compliance Status System as applicable.

(b) Recertification Requirement for Mixed Income HTC, Exchange and TCAP Developments. HTC projects (as defined on Part II question, 8b of IRS form 8609) with Market Units must complete annual income recertifications. See §60.112 of this chapter (relating to Managing Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments) for maintaining compliance with the Available Unit Rule.

(c) Student Requirements for HTC, Exchange and TCAP Developments. Changes to student status reported by the household at anytime during their occupancy or on the AEC require the Owner to determine if the household continues to be eligible under the HTC program. During the Compliance Period, if the household is comprised of full-time students, the household must meet a HTC program exception, and supporting documentation must be maintained in the household's file. The Development must have a statement in a lease addendum (or in their lease contract) that requires households to report changes in their student status. During the Compliance Period, Noncompliance with this section will result in the issuance of IRS form 8823 reporting noncompliance under, "Low-income Units occupied

by nonqualified full-time students" and scored in the Department's Compliance Status System as applicable. Regardless of the requirements stated in a LURA, after the Compliance Period, the Department will not monitor to determine if households meet the student requirements of the Housing Tax Credit program.

(d) Recertification Requirements for BOND Developments. Regardless of the requirements stated in a LURA the Department will not monitor to determine if 100 percent income restricted Bond Developments (all units required to be leased to low-income and eligible tenants) perform annual income recertifications. Households will maintain their designation they had at initial certification.

(e) Student Requirements for BOND Developments. Bond Developments must continue to annually screen households for student status. The Owner must use the Department's Certification of Student Eligibility form and it must be maintained in the household's file. Changes to student status that the household reports at anytime during their occupancy or during annual screening for student status, require the Owner to determine if the household continues to be eligible under the Bond program. If the household is comprised of full-time students then the household must meet a program exception, which must be documented and maintained in the household's file. 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). The Development must have a statement in a lease addendum (or in their lease contract) that requires households to report changes in their student status. Noncompliance with this section will result in a noncompliance finding under, "Low-income Units occupied by nonqualified full-time students" and scored in the Department's Compliance Status System as applicable.

(f) Recertification Requirements for HOME Developments.

(1) For HOME Investment Partnership Developments, in accordance with 24 CFR §92.203 and §92.252 of the HOME Final Rule, regardless of the requirements stated in a LURA, recertification requirements will be monitored as shown in paragraph (2)(A) - (F) of this subsection.

(2) HOME Developments must complete a recertification with verifications of each HOME assisted Unit every sixth year of the Development's affordability period. For purposes of this section the beginning of a HOME Development affordability period is the effective date on the first page of the HOME LURA. For example, a HOME Development with a LURA effective date of May 2001 will have the sixth year of the affordability period determined in *Example 111(1):*

(A) Year 1: May 2001 - April 2002;

(B) Year 2: May 2002 - April 2003;

(C) Year 3: May 2003 - April 2004;

(D) Year 4: May 2004 - April 2005;

(E) Year 5: May 2005 - April 2006;

(F) Year 6: May 2006 - April 2007.

(3) In the scenario in paragraph (2) of this subsection, all households in HOME Units must be recertified with source documentation between May 2006 to April 2007, even if a household moved in to the Development in 2005. In the intervening years the Development must collect a self certification

from each household that is assisted with HOME funds. The form must report the following: the number of household members, age, income and assets, ethnicity, race, disability status, rental amounts and rental assistance (if any). The Development must use the Department's Income Certification form to collect this information and it must be maintained in the household's file. Noncompliance with this section will result in a noncompliance finding of, "Owner failed to maintain or provide tenant annual income recertification" and scored in the Department's Compliance Status System as applicable. If the household reports on their self certification that their household income is above the current 80 percent 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 a recertification with verifications is required.

(4) Fixed HOME Developments (defined as 100 percent of the Units in the Development are HOME assisted) that contain households with an annual income greater than the 80 percent applicable income limit at recertification must be designated as over income ("OI") and the rent charged must be 30 percent of the household's adjusted income. The Next Available Unit must be leased to a household with an income and rent less than either the Low or High HOME limit depending on what designation the Development needs to maintain compliance with the HOME LURA. Noncompliance with this section will result in a noncompliance finding of "Household income increased above 80 percent at recertification and owner failed to properly determine rent" and scored in the Department's Compliance Status System as applicable.

(5) Floating HOME Developments with Market Units (defined when only a percentage of the Units are HOME assisted) that contain households with income greater than 80 percent at recertification must be designated as OI and the rent charged will be the lesser of 30 percent of the household's adjusted income or comparable Market rent. The Next Available non-HOME Unit on the Development must be leased to a household with income and rent less than either the Low or High HOME limit depending on what designation the Development needs to maintain compliance with the HOME LURA. The OI household may be redesignated as Market once the OI Unit is replaced with another low-income Unit and in accordance with the lease terms. A thirty (30) day written notice of a rent increase must be provided to the OI household. Noncompliance with this section will result in a noncompliance finding of, "Household income increased above 80 percent at recertification and owner failed to properly determine rent" and scored in the Department's Compliance Status System as applicable.

(6) One-hundred percent low income HOME Developments layered with other Department affordable housing programs, that contain household's with income greater than 80 percent at recertification, must be designated as OI under the HOME program. The rent charged must be the lesser of 30 percent of the household's adjusted income or the gross rent allowable under the other program's rent limit. The Development must maintain compliance with all applicable program rent requirements. Noncompliance with this section will result in a noncompliance finding of, "Household income increased above 80 percent at recertification and owner failed to properly determine rent" and scored in the Department's Compliance Status System as applicable.

(g) Recertification Requirements for One-Hundred Percent HTF Developments: Regardless of the requirements stated in a LURA, the Department will not monitor to determine if 100 percent low income HTF Developments performed annual income recertifications. The household will maintain its initial low-income designation at move in and throughout the household's occupancy i.e., Extremely Low Income ("ELI"), Very Low Income ("VLI") and Low Income ("LI") provided that the Owner does not charge gross rent in excess of the applicable rent limit.

(h) Recertification Requirements for HTF Developments with Market units: HTF Developments with

Market Units in one or more buildings (as evidenced in their LURA) must perform annual income recertifications of all households residing in HTF Program Units, The HTF program requires Developments to comply with the Available Unit Rule. If a household's income exceeds 140 percent of the recertification limit (highest income tier), the household must be redesignated as OI and the Next Available Unit on the Development must be leased to a household with an income and rent less than the EVI, VLI, and LI limit depending on what designation the Development needs to maintain compliance with the LURA. The OI household may be redesignated in accordance with lease terms as Market once the OI Unit is replaced with another low-income Unit.

(i) Recertification Requirements for CDBG and NSP Developments: CDBG or NSP Developments are not required to perform annual recertifications unless the CDBG and NSP LURAs specify this requirement.

Source Note: The provisions of this §60.111 adopted to be effective February 14, 2011, 36 TexReg 768

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SUBCHAPTER A	COMPLIANCE MONITORING
RULE §60.112	**Managing Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments**

Historical Texas Register

(a) Under the Code, HTC Development Owners elect a minimum set-aside requirement of 20/50 or 40/60 (20 percent of the Units restricted to the 50 percent income and rent limit, or 40 percent of the Units restricted at the 60 percent income and rent limits). The minimum set-aside elected sets the maximum income and rent limits for the low-income units on the Development. Many Developments have additional income and rent requirements (i.e. 30 percent, 40 percent and 50 percent) that are lower than the minimum set-aside requirement. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's Land Use Restriction Agreement ("LURA"). The Department will examine the actual gross rent and income levels of all households to determine if the additional income and rent requirements of the LURA are met.

(b) For 100 percent HTC Developments that are not required to perform annual recertification, regardless of the requirements stated in the Development's LURA, the additional rent and occupancy restrictions will be monitored as follows:

(1) Households initially certified at the 30 percent income and rent limits. Households will maintain their designation they had at initial move-in. The Unit will continue to meet the 30 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 30 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 30 percent limit;

(2) Households initially certified at the 40 percent income and rent limits. Households will maintain their designation they had at initial move in. The Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 40 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 40 percent limit; and

(3) Households initially certified at the 50 percent income and rent limits. Households will maintain their designation they had at initial move in. The Unit will continue to meet the 50 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 50 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 50 percent limit.

(c) Mixed Income HTC Developments with Market Units will be monitored as follows:

(1) The HTC program requires Mixed Income Developments with Market Units to comply with the Available Unit Rule. When a household's income at recertification exceeds 140 percent of the applicable current income limit elected by the minimum set-aside, the owner must comply with the

Available Unit Rule and lease the next available unit (same size or smaller) in the building to a low-income household to maintain compliance. For HTC Developments that are required to perform annual recertifications, the additional rent and occupancy restrictions will be monitored as follows:

(A) Households initially certified at the 30, 40 or 50 percent income and rent limits;

(B) Households will maintain the designation they had at initial move in unless the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside. The Unit will continue to meet the designation that had at initial certification provided that the Owner does not charge gross rent in excess of the additional rent and occupancy rent limit;

(C) The household will not be required to vacate the Unit for other than good cause. When the household vacates the Unit, the next available Unit on the Development must be leased so as to meet the Development's additional rent and occupancy restrictions;

(D) If the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside the household must be redesignated as over income ("OI") and the Next Available Unit Rule must be followed. *Example 112(1):* A household was initially certified at the 40 percent income limit at move in. The household's income increases at recertification above the 40 percent income limit to the 50 percent income limit. The Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge rent in excess of the 40 percent rent limit. When the household vacates the Unit, the Next Available Unit on the Development is leased to a household with an income and rent less than the 40 percent limits; and

(2) This subsection does not require HTC Developments to lease more Units under the additional occupancy restrictions than established in their LURA.

Source Note: The provisions of this §60.112 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.113	**Household Unit Transfer Requirements for All Programs**

Historical Texas Register

(a) Household Transfers for One-Hundred percent HTC, Exchange, and TCAP Developments. For HTC Developments that are 100 percent low-income, a household may transfer to any Unit within the same project, as defined as a multiple building project on Part II, question 8b of the IRS form 8609. If the Owner elected to treat each building as a separate project, as defined on Part II, question 8b of the 8609 form, households must be certified as low-income (determined by the Development's minimum set-aside election) prior to moving to another building on the Development.

(b) Household Transfers for Mixed Income HTC, Exchange and TCAP Developments. For HTC Developments that are Mixed Income with Market Units, a household may transfer to another building in the same project, as defined as a multiple building project on Part II of the IRS form 8609 if the household was not over income ("OI") at the time of the last annual income recertification. If the Owner elected to treat each building as a separate project, as defined on Part II of the IRS form 8609, households must be certified as low-income (determined by the Development's minimum set-aside election) prior to moving to another building on the Development.

(c) BOND, HTF, HOME, CDBG, and NSP for Household Transfers. For BOND, HTF, HOME, CDBG and NSP Developments that are 100 percent low-income, a household may transfer to any Unit within the Development. If the Development has Market Units in one or more buildings (as evidenced in their LURA), a household may transfer to any Unit within the Development as long as the household is income certified for the new Unit prior to transfer. The household must be redesignated under the current income limit for each program requirement(s). If the Development is layered with Housing Tax Credits, default to transfer guidelines under the HTC rules.

(d) Household Transfers in the Same Building for all Programs. A Household may transfer to a new Unit within the same building. The unit designations will swap status. *Example 113(1):* Building 1 has 4 low-income Units. Units 1 through 3 are occupied by low-income households and Unit 4 is a vacant low-income unit. The household in Unit 2 moves to Unit 4 and the Unit designations swap status. Unit 2 is now a vacant low-income unit.

Source Note: The provisions of this §60.113 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.114	**Requirements Pertaining to Households with Rental Assistance**

Historical Texas Register

(a) The Department will monitor to ensure Development Owners comply with §2306.269 and §2306.6728, Texas Government Code, regarding residents receiving rental assistance under Section 8, United States Housing Act of 1937 (42 U.S.C. §1437f).

(b) The policies, standards and sanctions established by this section apply only to:

(1) multifamily housing developments that receive the following assistance from the Department on or after January 1, 2002 (§2306.185 of the Texas Government Code);

(A) a loan or grant in an amount greater than 33 percent of the market value of the Development on the date the recipient took legal possession of the Development; or

(B) a loan guarantee for a loan in an amount greater than 33 percent of the market value of the Development on the date the recipient took legal title to the Development;

(2) multifamily rental housing Developments that applied for and were awarded housing tax credits after 1992;

(3) housing developments that benefit from the incentive program under §2306.805 of the Texas Government Code; and

(4) housing Developments that receive funding from the HOME program (24 CFR §92.252(d)).

(c) Owners of multifamily rental housing developments described in subsection (a) of this section are prohibited from:

(1) excluding an individual or family from admission to the Development because the individual or family participates in the HOME Tenant Based Rental Assistance Program or the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1437f); and

(2) using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than 2.5 times the individual's or family's share of the total monthly rent payable to the Owner of the Development. A household participating in the voucher program or receiving any other type of rental assistance may not be required to have a minimum income exceeding $2,500 per year.

(d) To demonstrate compliance with this section, Owners shall:

(1) State in their leasing criteria that the Development will comply with state and federal fair housing and antidiscrimination laws;

(2) Apply screening criteria uniformly, (rental, credit, and/or criminal history), including employment policies, and in a manner consistent with the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules;

(3) Approve and distribute an Affirmative Marketing Plan that will be used to attract prospective applicants of all minority and non-minority groups in the housing market area regardless of their race, color, religion, sex, national origin, disability, familial status, or religious affiliation. Racial groups to be marketed to may include White, African American, Native American, Alaskan Native, Asian, Native Hawaiians or Other Pacific Islanders. Other groups in the housing market area who may be subject to housing discrimination include, but are not limited to, Hispanic or Latino groups, persons with disabilities, families with children, or persons with different religious affiliations. The Affirmative Marketing Plan must be provided to the property management and onsite staff. Owners are encouraged to use HUD Form 935.2A, and may use any version of this Form as applicable. The Affirmative Marketing Plan must identify the following:

(A) Which group(s) the Owner believes are least likely to apply for housing at the Development without special outreach. All Developments must select persons with disabilities as one of the groups identified as least likely to apply. When identifying racial/ethnic minority groups the Development will market to, factors such as the characteristics of the housing's market area should be considered. *Example 114(1):* An Owner obtains census data showing that 6.5 percent of the city's total population are identified as Asian Americans. However, the Owner's demographic data for the Development shows that zero Asian American households are represented. The Owner chooses to identify Asian American groups as one of the groups least likely to apply at the Development without special outreach;

(B) Procedures that will be used by the Owner to inform and solicit applications from persons who are least likely to apply. Specific media and community contacts that reach those groups designated as least likely to apply must be identified (community outreach contacts may include neighborhood, minority, or women's organizations, grass roots faith-based or community-based organizations, labor unions, employers, public and private agencies, disability advocates, or other groups or individuals well known in the community that connect with the identified group(s). *Example 114(2):* An Owner has identified the disabled as least likely to apply and has decided to send letters on a quarterly basis to the Case Manager at a non-profit organization coordinating housing for developmentally disabled adults. Additionally, the Owner will advertise upcoming vacancies in a monthly newsletter circulated by an organization serving the hearing impaired;

(C) How the Owner will assess the success of Affirmative Marketing efforts. Affirmative Marketing Plans should be reviewed on an annual basis to determine if changes should be made and plans must be updated every five (5) years to fully capture demographic changes in the housing's market area;

(D) Records of marketing efforts must be maintained for review by the Department during onsite monitoring visits. *Example 114(3):* The Owner keeps copies of all quarterly correspondence mailed to the contacts or community groups identified in the Affirmative Marketing Plan. The letters are dated and addressed and show that the Owner is actively marketing vacancies, or a waiting list to the groups identified in the Owner's plan. Failure to maintain a reasonable Affirmative Marketing Plan and documentation of marketing efforts on an annual basis will result in a finding of noncompliance;

(E) If a Development does not have any vacant units, Affirmative Marketing is still required and Owners must maintain a waiting list. If a Development does not have any vacancies and the waiting list is closed, Affirmative Marketing is not required; and

(F) In accordance with 24 CFR §92.253(d) of the HOME Final Rule, Owners of HOME Developments must maintain a written waiting list and tenant selection criteria. Failure to maintain these documents will result in a finding of noncompliance.

Source Note: The provisions of this §60.114 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.115	**Onsite Monitoring**

Historical Texas Register

(a) The Department may perform an onsite monitoring review of any low income 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, Exchange and TCAP 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 other Developments as leasing commences;

(3) subsequent reviews at least once every three years during the Affordability Period;

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

(5) 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 forty-eight (48) hours notice will be provided).

(c) The Department will perform onsite file reviews and monitor:

(1) a sampling of the low income resident files in each Development, and review the income certifications;

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

(3) the rent records and any additional information that the Department deems necessary.

(d) At times other than onsite 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.

(e) 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 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 noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits.

Source Note: The provisions of this §60.115 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.116	**Monitoring for Social Services**

Historical Texas Register

(a) If a Development's LURA requires the provision of social services, the Department will confirm this requirement is being met. Owners are required to maintain sufficient documentation to evidence that services are actually being provided. Documentation will be reviewed during onsite visits and must be submitted to the Department upon request. *Example 116(1):* The Owner's LURA requires provision of on-site 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.

(b) Supportive services must be fully implemented prior to the issuance of IRS forms 8609 for the HTC program. If an Owner wishes to change the scope of services provided, prior approval from the Department is necessary. The Department, upon review of the Owner's request and the Development's original application, may also require the Owner to submit a proposed amendment to the LURA. 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.

Source Note: The provisions of this §60.116 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.117	**Monitoring for Non-Profit Participation or HUB Participation**

Historical Texas Register

(a) If a Development's LURA requires the material participation of a non-profit or Historically Underutilized Business ("HUB"), the Department will confirm this requirement is being met throughout the development phase and ongoing operations of the Development. Owners are required to maintain sufficient documentation to evidence that a non-profit or HUB is materially participating. Documentation may be reviewed during onsite visits or must be submitted to the Department upon request.

(b) If an Owner wishes to change the non-profit, or HUB, prior approval from the Department is necessary. The Annual Owner's Compliance Report also requires Owners to certify to compliance with this requirement. Failure to comply with the requirements of this section shall result in a finding of noncompliance. In addition, the Internal Revenue Service will be notified if the non-profit is not materially participating on a HTC Development during the Compliance Period.

(c) The Department does not enforce partnership agreements or determine equitable fund distributions of partnerships. These disputes are matters for a court of competent jurisdiction.

Source Note: The provisions of this §60.117 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.118	**Property Condition Standards**

Historical Texas Register

(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. The Department may contract with a third party to complete UPCS inspections.

(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 will evaluate UPCS reports in the following manner:

(1) A finding of Major Violations will be cited if:

(A) Life threatening health, safety, or fire safety hazards are reported on the Notification of Exigent and Fire Safety Hazards Observed form and are not corrected within twenty-four (24) hours of the inspection with notification of correction submitted to the Department within seventy-two (72) hours of the inspection. Failure to notify the Department of correction within seventy-two (72) hours of the correction of any exigent health and safety or fire safety hazards listed on the Notification will result in a finding of Major Violations of the Uniform Physical Condition Standards for the Development; or

(B) An overall UPCS score of less than 70 percent (69 percent or below) is reported.

(2) A finding of Pattern of Minor Violations will be assessed if an overall score between 70 percent and 89 percent is reported; or

(3) Findings of both Major and Minor Violations will be assessed if deficiencies reported meet the criteria for both.

(d) 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 (including smoke detectors and blocked egresses) to the IRS on Form 8823. Accordingly, the Department will submit Form 8823 for any UPCS violation. However, if the violation(s) does not meet the conditions described in subsection (c)(1) or (2) of this section, the issue will be noted in the Department's compliance status system as Administrative Reporting and no points will be assigned in the Department's compliance status evaluation of the Development. Non-HTC Developments that do not meet thresholds for Major and Pattern of Minor Violations as described in subsection (c)(1) or (2) of this section and correct all life threatening health, safety, and fire safety hazards noted at the time of inspection as directed in subsection (c)(1)(A) of this

section will not receive findings for UPCS inspections. Items noted that do not exceed thresholds for Major and Pattern of Minor Violations must be corrected by submission of an Owner's Certification of Repair within the ninety (90) day corrective action period.

(e) 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 (examples of such documentation include work orders, photographs, and/or invoices to third party repair specialists).

(f) The Department will provide to the Owner in writing a ninety (90) day corrective action period to respond to a notice of noncompliance for violations of the UPCS. The Department will grant up to an additional ninety (90) day extension if there is good cause and the Owner clearly requests an extension during the corrective action period.

(g) 24 CFR §92.251 of the HOME Final Rule requires rental property assisted with HOME funds to be maintained in compliance with all local codes and HQS (24 CFR §982.401). To meet this requirement, all HOME rental Development Owners must annually complete an HQS inspection of all HOME assisted Units. The Department will review HQS inspection sheets for all Units for compliance with this requirement during onsite monitoring visits.

(h) 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 thirty (30) days.

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

(i) Property damage that is the direct result of utility damage or malfunction or repair activity relating to such damage that is beyond the Development Owner's control, including, but not limited to, eruption of gas, sewer or storm sewer mains, water mains, and electrical fires, will not be taken into consideration in determining a compliance score, provided that the Development Owner did not negligently or intentionally serve as a proximate cause for the damage.

Source Note: The provisions of this §60.118 adopted to be effective February 14, 2011, 36 TexReg 768

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SUBCHAPTER A	COMPLIANCE MONITORING
RULE §60.119	**Notice to Owners**

Historical Texas Register

The Department will provide written notice to the Development Owner if the Department does not receive the Annual Owner Compliance Report ("AOCR") or discovers through audit, inspection, review or any other manner that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, or program rules and regulations, including §42 of the Code. Owners may request that results of monitoring reviews be emailed if all email addresses in the Contract Monitoring Tracking System are up to date. If Owners request such notices be sent by email, a paper copy will not be mailed by the Department. The notice will specify a correction period of ninety (90) days from the date of notice to the Development Owner, during which the Development Owner may respond to the Department's findings, bring the Development into compliance, or supply any missing documentation or certifications. The Department may extend the correction period for up to six (6) months from the date of the notice to the Development Owner if there is good cause for granting an extension and the owner requests an extension during the original ninety (90) day corrective action period. If any communication to the Development 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 Development Owner. The Development Owner is responsible for providing the Department with current contact information, including address(es) and phone number(s). The Development 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).

Source Note: The provisions of this §60.119 adopted to be effective February 14, 2011, 36 TexReg 768

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SUBCHAPTER A	COMPLIANCE MONITORING
RULE §60.120	**Special Rules Regarding Rents and Rent Limit Violations**

Historical Texas Register

(a) Rent or Utility Allowance Violations of the maximum allowable limit (HTC). 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 a HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Department will report the violation as corrected on the date that the rent plus the utility allowance, plus fees, is less than the applicable limit. 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 (HTC). If the Owner agreed to lease Units at rents less than the maximum allowed under the Code (additional occupancy restrictions), the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged. This applies during the entire Affordability Period. The noncompliance event will be considered corrected on the date which is the later of the date the overcharged rent was refunded/credited to the resident or the date that the rent plus the utility allowance is equal to or less than the applicable limit. *Example 120(1):* For Code §42 purposes, the maximum allowable limit is 60 percent. However, the Owner agreed to lease some Units to households at the 30 percent income and rent limits. It was discovered that the 30 percent households were overcharged rent. The Owner will be required to reduce the current amount of rent charged and refund the excess rents to the households.

(c) Rent Violations of the maximum allowable limit due to application fees (HTC). 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. The amount of time Development staff spends on checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add $5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. Should an Owner desire to include a higher amount to cover staff time, wage information and a time study must be supplied to the Department upon request. Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Forms 8823 under the category Gross rent(s) exceeds tax credit limits. The noncompliance will be corrected on the later of January 1st of the next year or as of the date the application fee is reduced and evidence of a reduced application fee is supplied to the Department. Owners are not required to refund the overcharged fee amount. If the Development refunds the overcharged fee in full or in part, the units will remain out of compliance until January 1st of the next year or until the application fee is reduced.

(d) Rent or Utility Allowance Violations on Non-HTC Developments. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged.

(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 rent collected must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four (4) year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be dispersed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME Developments. 24 CFR §92.252 of the HOME Final Rule requires Owners to charge households with an income in excess of 80 percent at recertification, a rent equal to the lesser of 30 percent of the household's adjusted income or the market rent for comparable unassisted Units in the neighborhood. If at recertification the household self-certifies an income in excess of the 80 percent limit, documentation of all income, assets and allowable deductions must be obtained by the Owner. The Department will find a HOME Development in noncompliance with this section if the Owner fails to determine the over income household's adjusted income and maintain documentation of market rents for comparable unassisted Units in the neighborhood.

(g) Special conditions for NSP and CDBG 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.

Source Note: The provisions of this §60.120 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.121	**Notices to the Internal Revenue Service (HTC Properties)**

Historical Texas Register

(a) Even when an event of noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than forty-five (45) days after the end of the correction period specified in the Notice to Owner (including any extensions permitted by the Department) but will not be filed before the end of the correction period. The Department will indicate on IRS Form 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the noncompliance.

(b) The Department will retain records of noncompliance or failure to certify for six (6) years beyond the Department's filing of the respective IRS Form 8823. The Department will retain the AOCRs and records for three years from the end of the calendar year the Department receives the certifications and records.

(c) The Department will send the Owner of record copies of any IRS Forms 8823 submitted to the IRS. Copies of Forms 8823 will be submitted to the syndicator for Developments awarded tax credits after January 1, 2004. The Development Owner is responsible for providing the name and mailing address of the syndicator in the Annual Owner's Compliance Report.

Source Note: The provisions of this §60.121 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.122	**Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period**

Historical Texas Register

(a) HTC properties allocated credit in 1990 and after are required under the Code (§42(h)(6)) to record a LURA restricting the Development for at least thirty (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 rules detailed in paragraphs (1) - (12) of this subsection.

(1) On site monitoring visits will continue to be conducted approximately every three years, unless the Department determines that a more frequent schedule is necessary.

(2) In general, the Department will review 10 percent of the low income files. No less than five files and no more than twenty files will be reviewed.

(3) The exterior of the Development, all building systems and 10 percent of Low Income Units. No less than five but no more than thirty-five of the Development's HTC Low Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards.

(4) Each Development shall submit an annual report in the format prescribed by the Department.

(5) Reports to the Department must be submitted electronically as required in §60.105 of this chapter (relating to Reporting Requirements).

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

(7) 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.

(8) Rents will remain restricted for all HTC Low Income Units. After the Compliance Period, utilities paid to the Owner can be accounted for in the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit.

(9) All additional income and rent restrictions defined in the LURA remain in effect.

(10) 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.

(11) The Owner shall not terminate the lease or evict low income residents for other than good cause.

(12) The total number of required HTC Low Income Units must be maintained Development wide.

(c) After the first fifteen (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.

(2) The building's applicable fraction found in the Development's Cost Certification and/or the LURA. Low income occupancy requirements will be monitored Development wide, not building by building.

(3) Household transfers between buildings restricted by §42(g)(1) of the Code. All households, regardless of HTC income level designation, will be allowed to transfer between buildings within the Development.

(4) The Department will not monitor the Development's application fee after the Compliance Period is over.

(d) Regardless of the requirements stated in a LURA, the Department will monitor in accordance with this section.

(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 fifteen (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.

Source Note: The provisions of this §60.122 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.123	**Material Noncompliance Methodology**

Historical Texas Register

(a) The Department maintains a compliance history of each monitored Development in the Department's Compliance Status System. Developments with more than one program administered by the Department are scored by program. The Development will be considered in Material Noncompliance if the score for any single program exceeds the Material Noncompliance threshold for that program.

(b) A Development will not be assigned the scores noted in this section until after the Owner has been provided a written notice of the noncompliance and provided a corrective action deadline to show that either the Development was never in noncompliance or that the noncompliance event has been corrected.

(c) This section identifies all possible noncompliance events for all programs monitored by the Physical Inspection and Compliance Monitoring Sections of the CAO Division. However, not all issues listed in this section pertain to all Developments. In addition, only certain noncompliance events are reportable on Form 8823. Those events that are reportable under the HTC program on Form 8823 are so indicated in subsections (j) and (k) of this section.

(d) For HTC Developments, all Forms 8823 issued by the Department will be entered into the Department's Compliance Status System. However, Forms 8823 issued prior to January 1, 1998 will not be considered in determining Material Noncompliance.

(e) For all programs, a Development will be in Material Noncompliance if the noncompliance event is stated in this section to be Material Noncompliance. The Department may take into consideration the representations of the Owner regarding monitoring notices and Owner responses; however, unless an Owner can prove otherwise, the compliance records of the Department shall be presumed to be correct.

(f) All Developments, regardless of status, that are or have been administered, funded, or monitored by the Department, are scored even if the Development no longer actively participates in the program, with the exception of properties in the Federal Deposit Insurance Corporation's ("FDIC") Affordable Housing Disposition Program.

(g) A Development's score will be reduced by the number of points needed to be one point under the Material Noncompliance threshold provided that:

(1) The Development has no previously reported noncompliance events that are uncorrected;

(2) All newly identified noncompliance events are corrected during the corrective action period;

(3) All corrective action documentation for the newly identified noncompliance is provided to the Department during the corrective action period; and

(4) The Development was not already in Material Noncompliance at the time of its most recent monitoring review.

(h) If an Owner is unable to correct all issues during the corrective action period, the Owner may supply a corrective action plan for review by the Department that establishes dates that each uncorrected issue will be corrected and evidence of correction will be supplied. Provided that the Department approves the plan and the Owner follows the plan, upon correction of all issues, a Development's score will be reduced by the number of points needed to be one point under the Material Noncompliance threshold provided that:

(1) The Development has no previously reported noncompliance events that are uncorrected; and

(2) The Development was not already in Material Noncompliance at the time of its most recent review.

(i) Noncompliance events are categorized as either "Development events" or "Unit/building events". Development events of noncompliance affect some or all the buildings in the Development; however, the Development will receive only one score for the noncompliance event rather than a score for each Unit or building. Other noncompliance events are identified individually by Unit and will receive the appropriate score for each Unit cited with an event. The Unit scores and the Development scores accumulate towards the total score of the Development. Violations under the HTC program are identified by Unit; however, the building is scored rather than the Unit and the building will receive the noncompliance score if one or more of the Units in that building are in noncompliance.

(j) Uncorrected noncompliance events, if applicable to the Development, will carry the maximum number of points until the noncompliance event has been reported corrected by the Department. Once reported corrected by the Department, the score will be reduced to the "corrected value." Corrected noncompliance will no longer be included in the Development score one year after the date the noncompliance was reported corrected by the Department.

(k) Each noncompliance event is assigned a point value. The possible events of noncompliance and associated "corrected" and "uncorrected" points are listed in subsection (l) of this section.

(l) Figure: 10 TAC §60.123(l) lists events of noncompliance that affect the entire Development rather than an individual Unit. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. The Material Noncompliance threshold for a HTC and Exchange Developments is thirty (30) points. The Material Noncompliance threshold for a non-HTC Development with one (1) to fifty (50) Low Income Units is thirty (30) points. The Material Noncompliance threshold for a non-HTC Development with fifty-one to two hundred Low Income Units is fifty points. The Material Noncompliance threshold for non-HTC Developments with two hundred and one or more Low Income Units is eighty points. The third column lists the number of points assigned to the event from the date the issue is corrected until one (1) year after correction. The fourth column indicates which programs the noncompliance event applies. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.

Attached Graphic

(m) Figure: 10 TAC §60.123(m) lists ten events of noncompliance associated with individual Units. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. The Material Noncompliance threshold for a HTC or Exchange Development is thirty (30) points. The Material Noncompliance threshold for a non-HTC property with one (1) to fifty (50) Low Income Units is thirty (30) points. The Material Noncompliance threshold for a non-HTC Development with fifty-one (51) to two hundred (200) Low Income Units is fifty (50) points. The Material Noncompliance threshold for non-HTC properties with two hundred one (201) or more Low Income Units is eighty (80) points. The third column lists the number of points assigned to the event from the date the issue is corrected until one year after the event is corrected. The fourth column indicates what programs the noncompliance event applies to. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.

Attached Graphic

Source Note: The provisions of this §60.123 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.124	**Previous Participation Reviews**

Historical Texas Register

(a) Prior to providing any Department assistance, executing a Carryover Allocation Agreement, or processing a request for a Qualified Contract, the CAO Division will conduct a previous participation review to determine if the requesting entity controls a Development that is in Material Noncompliance, owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due single audit or single audit certification form, or has any unresolved audit or monitoring findings identified by the Contract Monitoring Section of the CAO Division. Previous participation reviews will also be conducted if more than one hundred twenty (120) days elapse between Board approval of an Application and a financing. Assistance includes but is not limited to allocating any Department funds or tax credits, with the exception of CSBG funds, engaging in loan or contract modifications that result in increased funding, approving a modification to a LURA (other than a technical error) and providing incentive awards.

(b) HTC Developments with any uncorrected issues of noncompliance or with pending notices of noncompliance will not be issued Form 8609s, Low Income Housing Credit Allocation Certifications, until all events of noncompliance are corrected.

(c) If during the previous participation review an uncorrected issue of noncompliance required by the HOME Final Rule is identified on a HOME Development monitored by the Department, the entity requesting assistance will be notified of the issue and provided five (5) business days to submit all necessary corrective action to cure the violation(s). The notification will be in writing and may be delivered by email. If the requesting entity does not cure the violation(s), the request for assistance will be terminated. If the request for assistance is terminated, the Board has the ability to reinstate the request for assistance for consideration as provided in §60.128(a) of this chapter (relating to Temporary Suspension of Previous Participation Reviews).

(d) If during the previous participation review, the Department determines that the requesting entity owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due single audit or single audit certification form, has unresolved audit or monitoring findings identified by the Contract Monitoring section of the CAO Division, or has control of an existing Development monitored by the Department that is in Material Noncompliance, the entity requesting assistance will be notified of the issue in writing and provided five (5) business days to submit all necessary corrective action, pay the fees, bring the loan current, or otherwise cure the violation(s). If the requesting entity does not cure the issue(s), the request for assistance will be terminated. If the request for assistance is terminated due to Material Noncompliance, the Board has the ability to reinstate the request for assistance for consideration as provided in §60.128(b) of this chapter.

(e) If during the previous participation review, the Department determines that the requesting entity or any person controlling the requesting entity is on the Department's or the U.S. Department of Housing

and Urban Development's ("HUD") debarred list, the request for assistance will be terminated. A request for assistance properly terminated for this reason cannot be reinstated for consideration. The request for assistance can be re-submitted, however, if the person or entity that is on the debarred list is no longer part of the requesting entity.

(f) For the purposes of previous participation reviews:

(1) The Department will not take into consideration the score of a Development that the requesting entity has not controlled for at least three (3) years;

(2) The Department will not take into consideration the score of a Development for which the Affordability Period ended over three (3) years ago;

(3) The Department will not take into consideration the score attributed to a Development for noncompliance with FDIC's Affordable Housing Disposition Program;

(4) If a requesting entity no longer controls a Development but has controlled the Development at any time in the last three (3) years, the Department will determine the score for the noncompliance events with a date of noncompliance identified during the time the requesting entity controlled the Development. If the points associated with the noncompliance events identified during the requesting entity's control of the Development exceed the threshold for Material Noncompliance, the request for assistance will be terminated but may be subject to reinstatement by the Board as provided in §60.128 of this chapter.

(g) Date for determining Material Noncompliance. Previous participation reviews will be conducted prior to the Board meeting when funds will be awarded, or if the request is not subject to Board action, prior to the Department providing the requested assistance. The score in effect at the completion of the previous participation review process (which includes the five (5) business day cure period referenced in subsections (c) and (d) of this section) will be used to determine if the request for assistance will be terminated. Previous participation reviews are not required to be performed if less than one hundred-twenty (120) days have elapsed since the last review, provided there is no change in the organizational structure.

(h) Treatment of units of government during a previous participation review. If a city, county or local government applies for assistance from the Department, a previous participation review will be conducted. If the city, county or unit of government controls a Development that is in Material Noncompliance, owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due single audit or single audit certification form or has unresolved audit or monitoring findings identified by the Contract Monitoring Section of the CAO Division, the process described in subsection (d) of this section will be followed. However, the previous participation of individual elected officials will not be considered provided that they are not the contract executor for the requesting entity.

(i) Treatment of nonprofits during a previous participation review. If a nonprofit applies, or is associated with, an application for assistance from the Department, a previous participation review will be conducted. If the nonprofit controls a Development that is in Material Noncompliance, owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due single audit or single audit certification form or has unresolved audit or monitoring findings identified by the Contract Monitoring Section of the CAO Division, the process described in subsection (d) of this section will be followed. If it is determined that the Executive Director, Chair of the Audit Committee, Board Chair or any member of the Executive Committee of the nonprofit controls a Development that is in Material

Noncompliance, owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due single audit or single audit certification form or has unresolved audit or monitoring findings identified by the Contract Monitoring Section of the CAO Division, the process described in subsection (d) of this section will be followed. If within the five (5) business day period, the party with noncompliance resigns from the applicable position of the nonprofit organization requesting assistance, the noncompliance will not be taken into consideration. If it is determined that any member of the Board of the Nonprofit is on the Department's or HUD's debarred list, the request for assistance will be terminated. A request for assistance properly terminated for this reason cannot be reinstated for consideration. The request for assistance can be re-submitted, however, if the person on the debarred list resigns from the applicable nonprofit organization requesting assistance.

(j) Previous participation review for ownership transfers. Consistent with this section, the Department will perform a previous participation review prior to approving any transfer of ownership of a Development or any change in the Owner of a Development. The previous participation review shall be conducted with respect to the Developments controlled by the person coming into ownership, not with respect to the Development or Owner being transferred.

Source Note: The provisions of this §60.124 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.125	**Alternative Dispute Resolution**

Historical Texas Register

(a) It is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution ("ADR") procedures to assist in resolving disputes under the Department's jurisdiction. If at any time an applicant or other person would like to engage the Department in an ADR process, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.

(b) In all phases of monitoring, (construction and throughout the entire Affordability Period) if a potential issue of noncompliance has been identified, Owners will be provided a written notice of noncompliance. In general, the Department will provide up to a ninety (90) day corrective action period which can and will be extended for an additional ninety (90) days if there is good cause and the Owner requests an extension during the corrective action period.

(c) Owners must respond to the Department's notice of noncompliance. If an Owner does not respond, this ADR process which is explained in this section cannot be initiated.

(d) If an Owner does not agree with the Department's assessment of compliance, they should clearly explain their position and provide as much supporting documentation as possible. If the position is reasonable and well supported, the issue of noncompliance will be cleared with no further action taken, i.e. for HTC properties, Form 8823 will not be filed with the IRS and the issue will not be scored in the Department's compliance status system.

(e) If an Owner's response indicates disagreement with the Department's assessment of noncompliance, but does not appear to be a valid concern to the Department, staff will notify the Owner in writing of their right to engage in ADR. The Owner must respond in five (5) days and request ADR. In addition, the Owner must request an extension of the corrective action deadline, if one is still available. If the Owner does not respond to the staff's invitation to engage in ADR, the Department's assessment of the violation is final.

(f) The Department must meet the Treasury Regulation requirement found in §1.42-5 and file Form 8823 within forty-five (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. In this circumstance, the Form 8823 will be filed. However, it will be sent to the IRS with an explanation that the Owner disagrees with the Department's assessment and is pursuing ADR. All Owner supplied documentation supporting their position will be supplied to the IRS. Although the violation will be reported to the IRS within the required timeframes, it will not be scored in the Department's compliance status system pending outcome of ADR.

(g) ADR is not an appropriate format for matters regarding interpretations of laws, regulations and rules. ADR can only be used when parties could reach consensus.

Source Note: The provisions of this §60.125 adopted to be effective February 14, 2011, 36 TexReg 768

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RULE §60.126	**Liability**

Historical Texas Register

Compliance with the program requirements, including compliance with §42 of the IRC, is the sole responsibility of the Development Owner. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner, including the Development Owner's noncompliance with §42 of the IRC, the Fair Housing Act, §504 of the Rehabilitation Act of 1973, HOME program regulations, BOND program requirements, and all other programs monitored by the Department.

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CHAPTER 60	COMPLIANCE ADMINISTRATION
SUBCHAPTER A	COMPLIANCE MONITORING
RULE §60.127	**Applicability**

Historical Texas Register

Unless otherwise noted, these provisions apply to all Developments administered by the Department.

Source Note: The provisions of this §60.127 adopted to be effective February 14, 2011, 36 TexReg 768

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TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 60	COMPLIANCE ADMINISTRATION
SUBCHAPTER A	COMPLIANCE MONITORING
RULE §60.128	**Temporary Suspension of Previous Participation Reviews**

Historical

Texas Register

(a) An entity whose request for assistance is terminated under §60.124 of this chapter (relating to Previous Participation Reviews) may request reinstatement of the Application for consideration for approval. The request must be in writing and must be submitted to the Department within five (5) business days of the date of the Department's letter notifying the requesting entity of the termination/denial. A timely filed request for reinstatement shall be placed on the agenda for the next Board meeting for which it can be properly posted.

(b) If an Application for assistance was terminated under §60.124 of this chapter, the Board may consider reinstatement of the application only in the event that it determines, after consideration of the relevant, material facts and circumstances that:

(1) it is in the best interests of the Department and the State to proceed with the award;

(2) the award will not present undue increased program or financial risk to the Department or State;

(3) the applicant is not acting in bad faith; and

(4) the applicant has taken reasonable measures within its power to remedy the cause for the termination.

(c) Reinstatement of a terminated Application merely makes the Application eligible to be considered and does not, in and of itself, constitute approval.

Source Note: The provisions of this §60.128 adopted to be effective February 14, 2011, 36 TexReg 768

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TITLE 10	COMMUNITY DEVELOPMENT
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CHAPTER 60	COMPLIANCE ADMINISTRATION
SUBCHAPTER A	COMPLIANCE MONITORING
RULE §60.129	**Temporary Suspension of Other Sections of This Subchapter**

Historical Texas Register

(a) Temporary suspensions of other sections of this subchapter may be granted if the Board finds one or more of the following factors applicable to a Development:

(1) A natural disaster or other act of God has made the application of this subchapter to a Development infeasible for a period of time and the Governor of Texas or President of the United States has previously made a disaster declaration for the area including the Development during the relevant time period;

(2) Due to documented shortages in items necessary to complete the requirements of the subchapter, the Owner was unable to meet the subchapter requirements, this would include but not be limited to a shortage of labor, building materials, or public utilities available;

(3) A federal rule has changed that significantly changed the ability of the Owner to deliver the services required at the time the Development was placed in service or began operation provided, however, that the Board cannot waive the rule itself and the Owner must comply, but the Board may suspend the compliance score related to the violation in this situation; and/or

(4) A Development has been subjected in part to a governmental action such as partial condemnation through no fault of the Owner, eminent domain, or zoning changes that do not allow corrections of compliance issues required by the Department.

(b) Under no circumstances can the Board suspend for any period of time compliance with the HOME Final Rule or regulations issued by HUD when required by federal law.

(c) Under no circumstances can the Board suspend for any period of time Treasury Regulations, IRS publications controlling the submission of Form 8823, or any sections of 26 U.S.C. §42.

(d) Examples of items the Board could temporarily suspend include the requirement to report online; requirement to use Department approved forms; sampling size requirements for agency calculated utility allowance; or the requirement to repay overcharged rent on a HTF property.

Source Note: The provisions of this §60.129 adopted to be effective February 14, 2011, 36 TexReg 768

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