Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.4

The Texas Department of Housing and Community Affairs (the Department) adopts without changes to the proposed text as published in the February 6, 2026 issue of the *Texas Register* (51 TexReg 669) the amendment to 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.4, Protest Procedures for Contractors. The rule will not be republished. The purpose of the amended section is to make several minor changes to bring this rule into greater compliance with the rules of the Texas Comptroller of Public Accounts found at 34 TAC Chapter 20, Subchapter F, Division 3.

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

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

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

1. The amended section does not create or eliminate a government program but relates to minor revisions to bring the rule into greater compliance with the Comptroller's rules on the same subject.

2. The amended section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The amended section does not require additional future legislative appropriations.

4. The amended section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The amended section is not creating a new regulation.

6. The amended section will not expand, limit, or repeal an existing regulation.

7. The amended section will not increase or decrease the number of individuals subject to the rule's applicability.

8. The amended section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the amended section and determined that it will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amended section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amended section as to its possible effects on local economies and has determined that for the first five years the amended section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the new section would be greater consistency between the Department's rule and the Comptroller's rule on the same subject. There will not be economic costs to individuals required to comply with the amended section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the amended section is in effect, enforcing or administering the section does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department accepted public comment from February 6, 2026 to March 8, 2026. No public comment was received and the rule is adopted without changes.

STATUTORY AUTHORITY. The amended section is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the amended section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: February 6, 2026
For further information, please call: (512) 475-3959

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10 TAC §1.5

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the proposed text as published in the February 6, 2026 issue of the *Texas Register* (51 TexReg 670), the amendments to 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.5, Waiver Applicability in the Case of State or Federally Declared Disasters. The rule will not be republished. The purpose of the amended section is to make several minor changes to provide greater clarity around when the Executive Director can waive rules when there have been state or federal regulatory waivers in response to state or federal disasters.

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

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

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

1. The amended section does not create or eliminate a government program but relates to minor revisions to make the rule more clear.

2. The amended section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The amended section does not require additional future legislative appropriations.

4. The amended section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The amended section is not creating a new regulation.

6. The amended section will not expand, limit, or repeal an existing regulation.

7. The amended section will not increase or decrease the number of individuals subject to the rule's applicability.

8. The amended section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the amended section and determined that it will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amended section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amended section as to its possible effects on local economies and has determined that for the first five years the amended section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the new section would be a more clear rule. There will not be economic costs to individuals required to comply with the amended section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the amended section is in effect, enforcing or administering the section does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. Public comment was accepted from February 6, 2026 to March 8, 2026, to receive input on the proposed action. No public comment was received and the amendment is adopted without changes.

STATUTORY AUTHORITY. The amended section is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the amended section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: February 6, 2026
For further information, please call: (512) 475-3959

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10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23, State of Texas Low Income Housing Plan and Annual Report (SLIHP), without

changes to the proposed text as published in the February 6, 2026 issue of the *Texas Register* (51 TexReg 672). The rule will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action, in order to adopt by reference the 2026 SLIHP.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption by reference the 2026 SLIHP, as required by Tex. Gov't Code §2306.0723.

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

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

4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption in order to adopt by reference the 2026 SLIHP.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated more germane rule that will adopt by reference the 2025 SLIHP. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period for the rule was held Monday, February 2, 2026, through Sunday, March 8, 2026, to receive input on the proposed repealed section. No comments were received on the proposed repeal of §1.23.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Tex. Gov't Code §2306.0723, which requires this annual report to be considered a rule and be adopted following rulemaking procedures.

Except as described herein the repealed section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP), without changes to the proposed text as published in the February 6, 2026 issue of the *Texas Register* (51 TexReg 673). The rule will not be republished. The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.0723 and to adopt by reference the 2026 SLIHP, which offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The 2026 SLIHP reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2024, through August 31, 2025).

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it is exempt under item (c)(9) because it is necessary to implement legislation. Tex. Gov't Code §2306.0721 requires that the Department produce a state low income housing plan, and Tex. Gov't Code §2306.0722 requires that the Department produce an annual low income housing report. Tex. Gov't Code §2306.0723 requires that the Department consider the annual low income housing report to be a rule. This rule provides for adherence to that statutory requirement. Further no costs are

associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the adoption, by reference, of the 2026 SLIHP, as required by Tex. Gov't Code §2306.0723.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will not expand, limit, or repeal an existing regulation.

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.0723.

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

2. There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to be null. There are no rural communities subject to the rule for which the economic impact of the rule is projected to be null.

3. The Department has determined that because the rule will adopt by reference the 2025 SLIHP, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule has no economic effect on local employment because the rule will adopt by reference the 2026 SLIHP; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule will adopt by reference the 2026 SLIHP there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule that will adopt by reference the 2026 SLIHP, as required by Tex. Gov't Code §2306.0723. There will not be any economic cost to any individuals required to comply with the new section because the adoption by reference of prior year SLIHP documents has already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the new rule will adopt by reference the 2026 SLIHP.

SUMMARY OF PUBLIC COMMENT. The public comment period for the proposed new rule was held between Friday, February 6, 2026, and Sunday, March 8, 2026. The public comment period for the draft 2026 SLIHP was held between January 16, 2026, and February 16, 2026. A public hearing for the draft 2026 SLIHP was held on February 10, 2026, in Austin, Texas. Written comments were accepted by email and mail. While the Department received public comment on the draft 2026 SLIHP, no comments were received specifically regarding (and in response to) the proposed new rule.

STATUTORY AUTHORITY. The new section is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2026.

TRD-202601542
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

CHAPTER 7. HOMELESSNESS PROGRAMS
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §§7.1 - 7.12

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 7, Subchapter A, General Policies and Procedures, §§7.1 - 7.12, without changes to the proposed text as published in the January 30, 2026 issue of the *Texas Register* (51 TexReg 451). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule.

The rules provide guidance on program eligibility, applications, documentation, monitoring, and compliance. The Department's analysis identified the need to clarify terminology, refine definitions, update contract and reporting requirements, enhance oversight of construction and LURAs, and align marketing, records retention, and waiver procedures with current federal and state regulations.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, General Policies and Procedures for the Department's Homelessness Programs.

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

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

4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation but is associated with a simultaneous readoption making changes to an existing activity, General Policies and Procedures for the Department's Homelessness Programs.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between January 30, 2026 and March 3, 2026, and no comment was received on the repeal.

The Board adopted the final order adopting the repeal on April 9, 2026.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 29, 2026
Proposal publication date: January 30, 2026
For further information, please call: (512) 475-3959

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10 TAC §§7.1 - 7.12

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 7, Subchapter A, General Policies and Procedures, §§7.1 - 7.12, without changes to the text proposed text as published in the January 30, 2026 issue of the *Texas Register* (51 TexReg 452). The rules will not be republished. The purpose of the new subchapter is to update the rule to include special allocations of funds and to further clarify program requirements.

The rule provides guidance on program eligibility, applications, documentation, monitoring, and compliance. The Department's analysis identified the need to clarify terminology, refine definitions, update contract and reporting requirements, enhance oversight of construction and LURAs, and align marketing,

records retention, and waiver procedures with current federal and state regulations.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

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

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, General Policies and Procedures for the Department's Homelessness Programs.

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

3. The new rule does not require additional future legislative appropriations.

4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the proposed new rule provides a regulatory framework for instances where the Department receives an additional allocation of funds for homelessness programs not contemplated by the current rule. However, this addition to the rule is necessary to ensure compliance with federal and state fund commitment deadlines.

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

The Department has determined that because this rule only impacts nonprofits and units of local government by outlining administrative requirements of existing programs, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect the new rule has no economic effect on local employment because this rule only outlines administrative requirements of existing programs; therefore, no local employment impact statement is required to be prepared for the new rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule…" Considering that these programs are offered in all areas of the state, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new rule because the processes described by the rule have already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only outlines administrative requirements of existing programs.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment, to receive input on the proposed action, between January 30, 2026 and March 3, 2026. Comments regarding the repeal were accepted in writing with comments received from one commenter: 1) Sidney Beaty, Texas Housers.

Comment opposing the removal of Language Access Plans.

Rule Section §7.10(c)(2)

COMMENT SUMMARY: Commenter (1) opposed the removal of Language Access Plans at §7.10(c)(2), noting that Executive Order 14224 does not require agencies to eliminate such plans. They emphasized that maintaining language access is essential to ensure meaningful participation by individuals with limited English proficiency (LEP) in TDHCA-funded programs. Citing the Department of Justice, they highlighted that removing these plans could create barriers to critical services and harm low-income Texans seeking assistance.

STAFF RESPONSE: The Department acknowledges the comment regarding the importance of Language Access Plans (LAP) and affirms that maintaining language access is essential to ensure meaningful participation by individuals with limited English proficiency (LEP) in TDHCA-funded programs. Although the proposed repeal removes the specific requirement for a formal LAP, no change to the rule is necessary. The rule continues to re-

quire that subrecipients follow federal regulations and guidance when interacting with Program Participants with LEP. Consistent with Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987, subrecipients must take reasonable steps to ensure meaningful access to programs and activities for LEP persons, thereby preserving protections and accessibility for all participants.

The Board adopted the final order adopting the repeal on April 9, 2026.

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. The rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.

Except as described herein the adopted new rules affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §§7.31 - 7.43

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants (ESG) §§7.31 - 7.43, without changes to the text proposed text as published in the January 30, 2026 issue of the *Texas Register* (51 TexReg 460). The rule will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule.

These rules govern ESG program operations, including funding, eligibility, reporting, and Subrecipient compliance. The revisions update terminology, improve clarity, ensure consistency across Chapter 7, and align the rules with current federal and state program requirements. The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Emergency Solutions Grants Program.

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

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

4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation but is associated with a simultaneous readoption making changes to an existing activity, administration of the Emergency Solutions Grants Program.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between January 30, 2026 and March 3, 2026. No comment was received.

The Board adopted the final order adopting the repeal on April 9, 2026.

STATUTORY AUTHORITY. The adopted repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2026.

TRD-202601559
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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10 TAC §§7.31 - 7.43

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants (ESG) §§7.31 - 7.43. Section 7.40 is adopted with changes to the text proposed text as published in the January 30, 2026 issue of the *Texas Register* (51 TexReg 461). The rule will be republished. The remaining rules are adopted without changes and will not be republished. The purpose of the new subchapter is to update the rule to include special allocations of funds and to further clarify program requirements. Additionally, the Department has made a technical correction to clarify Language Access requirements in §7.40, Competitive Program Participant Services Selection Criteria. Previously, the rule awarded two points if a member of staff was fluent in one or more languages identified in the Applicant's Language Access Plan (LAP). The update clarifies that points are awarded when a staff member is fluent in one or more languages spoken by the population served in the Applicant's service area, consistent with §7.10(c)(2). This technical correction aligns the rule with current program administration and was not prompted by public comment.

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

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rules would be in effect:

1. The new rules do not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Emergency Solutions Grants Program.

2. The new rules do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new rules do not require additional future legislative appropriations.

4. The new rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rules are not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rules will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the new rule provides a regulatory framework for instances where the Department receives an additional allocation of funds for homelessness programs not contemplated by the current rule. However, this addition to the rule is necessary to ensure compliance with federal and state fund commitment deadlines.

7. The new rules will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The new rules will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting these new rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

The Department has determined that because these rules only impacts nonprofits and units of local government by outlining administrative requirements of an existing program, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rules do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new rules as to their possible effects on local economies and has determined that for the first five years the new rules will be in effect the new rules have no economic effect on local employment because this rule only outlines administrative requirements of an existing program; therefore, no local employment impact statement is required to be prepared for the new rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule…" Considering that these programs are offered in all areas of the state, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of the new rules will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new rules because the processes described

by the rule have already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rules are in effect, enforcing or administering the new rules does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only outlines administrative requirements of an existing program.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between January 30, 2026 and March 3, 2026. No comment was received.

The Board adopted the final order adopting the repeal on April 9,2026.

STATUTORY AUTHORITY. The new rule(s) is/are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new rules affect no other code, article, or statute.

§7.40. Competitive Program Participant Services Selection Criteria.

(a) An Application for competitive funding allocated under §7.33(b) of this title (relating to Apportionment of ESG Funds), and made to the Department, may be awarded points for Program Participant services under each category. Points awarded for Program Participant services will be separately tabulated and added to the uniform Application score to determine a score for each of the Program Participant services Applications submitted. All scoring criteria that are based upon measurable future performance expectations will be measured and expected to be fulfilled by being included as a performance requirement in the Contract should the Application be awarded funds.

(b) Street outreach. An Application proposing street outreach may receive points under the following criteria:

(1) Matching funds for street outreach. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for street outreach.

(2) Street outreach serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this title (relating to Definitions). An Applicant providing street outreach may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Street outreach exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date who exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with street outreach who exited to positive housing destinations;

(B) Three points based on 35% of persons served with street outreach who exited to positive housing destinations;

(C) Four points based on 45% of persons served with street outreach who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with street outreach who exited to positive housing destinations.

(4) Street outreach staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages identified by the Applicant as necessary to provide equitable and meaningful access for persons with Limited English Proficiency (LEP), as required by §7.10(c)(2); and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Street outreach temporary/transitional/permanent housing target. An Application may receive a maximum of three points based on the percentage of persons targeted to be served with street outreach who will be placed in temporary, transitional or permanent housing. An Application may receive a maximum of:

(A) One point based on a minimum target of 35% of persons served with street outreach who will be placed in temporary housing;

(B) Two points based on a minimum target of 45% of persons served with street outreach who will be placed in temporary housing; or

(C) Three points based on a minimum target of 55% of persons served with street outreach who will be placed in temporary housing.

(6) Street outreach services. An Application may receive a maximum of five points based on the number of street outreach services provided through ESG or other funds including engagement, case management, emergency health services, emergency mental health services, and transportation services. Emergency health services and emergency mental services may only be provided by ESG funds if these services are inaccessible or unavailable within the area. An Application may receive a maximum of:

(A) Two points if the Applicant provides street outreach engagement and case management;

(B) Three points if the Applicant provides street outreach engagement and case management, and one other service;

(C) Four points if the Applicant provides street outreach engagement and case management, and two other services; or

(D) Five points if the Applicant provides street outreach engagement and case management, and three other services.

(7) Experience providing street outreach. An Application may receive a maximum of 10 points based on the Applicant's experience providing street outreach services.

(A) Two points if the Applicant has provided street outreach for up to two years;

(B) Four points if the Applicant has provided street outreach for up to four years;

(C) Six points if the Applicant has provided street outreach for up to six years;

(D) Eight points if the Applicant has provided street outreach for up to eight years; or

(E) Ten points if the Applicant has provided street outreach for 10 or more years.

(c) Emergency shelter. An Application proposing emergency shelter may receive points under the following criteria:

(1) Matching funds for emergency shelter. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for emergency shelter.

(2) Emergency shelter serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this title. An Applicant providing emergency shelter may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Emergency shelter exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with emergency shelter who exited to positive housing destinations;

(B) Three points based on 35% of persons served with emergency shelter who exited to positive housing destinations;

(C) Four points based on 45% of persons served with emergency shelter who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with emergency shelter who exited to positive housing destinations.

(4) Emergency shelter staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages, other than English, identified by the Applicant as necessary to provide equitable and meaningful access for persons with Limited English Proficiency (LEP) in the Applicant's proposed service area under Contract, as required by §7.10(c)(2); and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Emergency shelter permanent housing. An Applicant may receive a maximum of three points based on the percentage of persons served with emergency shelter targeted to be placed in permanent housing. An Application may receive a maximum of:

(A) One point based on a minimum target of 35% of persons served with emergency shelter who will be placed in permanent housing;

(B) Two points based on a minimum target of 45% of persons served with emergency shelter who will be placed in permanent housing; or

(C) Three points based on a minimum target of 55% of persons served with emergency shelter who will be placed in permanent housing.

(6) Emergency shelter services. An Applicant may receive a maximum of five points based on the number of emergency shelter services provided through ESG or other funds, as listed in 24 CFR §576.102. Emergency shelter services include case management, child care, education services, employment assistance and job training, outpatient health services, legal services, life skills training, outpatient mental health services, outpatient substance abuse treatment services, and transportation. Outpatient health services, mental services, and substance abuse treatment services should only be provided by ESG funds if these services are otherwise inaccessible or unavailable within the Service Area. This selection criterion will become a contractual requirement if the Applicant is awarded a Contract. An Application may receive a maximum of:

(A) Two points if the Applicant provides case management and two of the other services;

(B) Three points if the Applicant provides case management and three of the other services;

(C) Four points if the Applicant provides case management and four of the other services; or

(D) Five points if the Applicant provides case management and five of the other services.

(7) Experience providing emergency shelter. An Application may receive a maximum of 10 points based on the Applicant's experience providing emergency shelter services.

(A) Two points if the Applicant has provided emergency shelter for up to two years;

(B) Four points if the Applicant has provided emergency shelter for up to four years;

(C) Six points if the Applicant has provided emergency shelter for up to six years;

(D) Eight points if the Applicant has provided emergency shelter for up to eight years; or

(E) Ten points if the Applicant has provided emergency shelter for 10 or more years.

(d) Homelessness prevention. An Application proposing homelessness prevention may receive points under the following criteria:

(1) Matching funds for homelessness prevention. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for homelessness prevention.

(2) Homelessness prevention serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this title. An Applicant providing homelessness prevention may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who have one or more special needs;

(B) Two points based on a minimum target of 80% of persons served who have one or more special needs;

(C) Three points based on a minimum target of 90% of persons served who have one or more special needs;

(D) Four points based on a minimum target of 95% of persons served who have one or more special needs; or

(E) Five points based on a minimum target of 100% of persons served who have one or more special needs.

(3) Homelessness prevention exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with homelessness prevention who exited to positive housing destinations;

(B) Three points based on 35% of persons served with homelessness prevention who exited to positive housing destinations;

(C) Four points based on 45% of persons served with homelessness prevention who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with homelessness prevention who exited to positive housing destinations.

(4) Homelessness prevention staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the homelessness prevention component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages, other than English, identified by the Applicant as necessary to provide equitable and meaningful access for persons with Limited English Proficiency (LEP) in the Applicant's proposed service area under the Contract, as required by §7.10(c)(2) of this title relating to Language Access Requirements and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Homelessness prevention maintaining housing. An Application may receive a maximum of three points based on the percentage of persons served with Homelessness prevention who are targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) One point based on a minimum target of 50% of persons served with homelessness prevention maintaining housing for three months;

(B) Two points based on a minimum target of (60% of persons served with homelessness prevention maintaining housing for three months; or

(C) Three points based on a minimum target of 70% of persons served with homelessness prevention maintaining housing for three months.

(6) Homelessness prevention services and rental assistance. An Application may receive a maximum of five points based on the number of homeless prevention services and type of rental assistance provided through ESG or other funds. Homeless prevention services and rental assistance include rental application fees, security deposits and last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, and medium-term rental assistance. An Application may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other services or rental assistance;

(C) Four points if the Applicant provides housing stability case management and five of the other services or rental assistance; or

(D) Five points if the Applicant provides housing stability case management and six of the other services or rental assistance.

(7) Experience providing homelessness prevention or rental assistance services. An Application may receive a maximum of 10 points based on the Applicant's experience providing homelessness prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for 10 or more years.

(e) Rapid re-housing. An Application proposing rapid re-housing may receive points under the following criteria:

(1) Matching funds for rapid re-housing. Applications may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for rapid re-housing.

(2) Rapid re-housing serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this title. Applicants providing rapid re-housing may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Rapid re-housing exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with rapid re-housing exited to positive housing destinations;

(B) Three points based on 35% of persons served with rapid re-housing who exited to positive housing destinations;

(C) Four points based on 45% of persons served with rapid re-housing who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with rapid re-housing who exited to positive housing destinations.

(4) Rapid re-housing staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the rapid re-housing component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages, other than English, identified by the Applicant as necessary to provide equitable and meaningful access for persons with Limited English Proficiency (LEP), as required by §7.10(c)(2); and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Rapid re-housing maintaining housing. Applicants may receive a maximum of three points based on the percentage of persons served with rapid re-housing targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) One point based on a minimum target of 50% of persons served with rapid re-housing maintaining housing for three months;

(B) Two points based on a minimum target of 60% of persons served with rapid re-housing maintaining housing for three months; or

(C) Three points based on a minimum target of 70% of persons served with rapid re-housing maintaining housing for three months.

(6) Rapid re-housing services and rental assistance. Applicants may receive a maximum of five points based on the number of rapid re-housing services and type of rental assistance provided through ESG or other funds. Rapid re-housing services and rental assistance include rental application fees, security deposits/last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, medium-term rental assistance. Applications may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other components;

(C) Four points if the Applicant provides housing stability case management and five of the other components; or

(D) Five points if the Applicant provides housing stability case management and six of the other components.

(7) Experience providing rapid re-housing or tenant-based rental assistance services. Applications may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for 10 or more years.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER E. POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

10 TAC §§10.400, 10.401, 10.405 - 10.408

The Texas Department of Housing and Community Affairs (the "Department") adopts the amendment, with changes, to 10 TAC Chapter 10, Subchapter E, §§10.400, 10.401, 10.405 - 10.408, Post Award and Asset Management Requirements to the proposed text as published in the January 30, 2026, issue of the *Texas Register* (51 TexReg 474). The rules will be republished. The purpose of the amendment is to make corrections to gain consistency across other sections of rule, correct references,

clarify existing language and processes that will ensure accurate processing of post award activities, and to communicate more effectively with multifamily Development Owners regarding their responsibilities after funding or award by the Department.

Tex. Gov't Code §2001.0045(b) does not apply to the amended rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset. In general, most changes were corrective in nature and clarify language or processes to more adequately communicate the language or process.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amended rule would be in effect, the amendment does not create or eliminate a government program, but relates to changes to an existing activity, concerning the post award activities of Low-Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.

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

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

4. The amendment does not result in an increase in fees paid to the Department or in a substantial decrease in fees paid to the Department.

5. The amendment is not creating a new regulation, but are revisions to provide additional clarification.

6. The amendment will not repeal an existing regulation.

7. The amendment will not increase or decrease the number of individuals subject to the rule's applicability.

8. The amendment will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

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

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

3. The Department has determined that because this amended rule relates only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amended rule as to its possible effects on local economies and has determined that for the first five years the amended rule will be in effect, there will be no economic effect on local employment, because the amended rule only provides for administrative processes required of properties in the Department's portfolio. No program funds are channeled through this amended rule, so no activities under this amended rule would support additional local employment opportunities. Alternatively, the amended rule would also not cause any negative impact on employment. Therefore, no local employment impact statement is required to be prepared for the amended rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the amended rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amended rule is in effect, the benefit anticipated as a result of the amended sections would be increased clarity and consistency across rule sections. There will not be economic costs to individuals required to comply with the amendment.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the amended rule is in effect, enforcing or administering the amended rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS. The Department accepted public comment between January 30, 2026, and March 3, 2026. No comments were received from the public during the public comment period.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein, the amended sections affect no other code, article, or statute.

§10.400. Purpose.

(a) The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily Development assistance pursuant to Tex. Gov't Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the Department) as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Own-

ers of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the corrective action period or outstanding fees (related to the Development subject to the request) owed to the Department must be resolved to the satisfaction of the Department before a request for any post award activity described in this subchapter will be acted upon. Non-compliance issues that cannot be corrected will be taken into account and will be reviewed by Asset Management staff to determine if additional action is required by the Development Owner.

(b) The capitalized terms in this subchapter shall have the meaning as defined in this title in Chapter 1 relating to Administration, Chapter 2 relating to Enforcement, Chapter 10 relating to Uniform Multifamily Rules, Chapter 11 relating to the Qualified Action Plan (QAP), Chapter 12 relating to the Multifamily Housing Revenue Bond Rules, Chapter 13 relating to the Multifamily Direct Loan Rule, Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the applicable HOME Rule, the NHTF Interim Rule, and other federal or Department rules, as applicable.

§10.401. Housing Tax Credit and Tax Exempt Bond Developments.

(a) 10% Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10% of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code and Treasury Regulations, 26 CFR §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (7) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10% Test will be contingent upon the submission of the items described in paragraphs (1) - (7) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for an extension will be reviewed on a case by case basis as addressed in §10.405(c) of this subchapter and §11.2 of this title, as applicable, and a point deduction evaluation will be completed in accordance with Tex. Gov't Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10% Test includes:

(1) An Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner. If, at the time the accountant is reviewing and preparing their report, the accountant has concluded that the taxpayer's reasonably expected basis is different from the amount reflected in the Carryover Allocation agreement, then the accountant's report should reflect the taxpayer's reasonably expected basis as of the time the report is being prepared;

(2) Any conditions of the Commitment or Real Estate Analysis underwriting report due at the time of 10% Test submission;

(3) Evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site and a current title policy. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10% Test must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter (relating to Amendments and Extensions);

(4) A current survey or plat of the Development Site, prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the flood plain boundary lines and show all easements and encroachments;

(5) For New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(6) For the Development Owner and on-site or regional property manager, training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that a controlling Principal in the Development Owner structure and an on-site or regional property manager attended and passed at least five hours of Fair Housing training. For architects and engineers, training certificate(s) from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. Certifications required under this paragraph must not be older than three years from the date of submission of the 10% Test Documentation, and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates; and

(7) A Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment may be required in accordance with §10.405 of this subchapter (relating to Amendments and Extensions), and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(8) Evidence of submission of the CMTS Filing Agreement pursuant to §10.607(a) of this title (relating to Reporting Requirements).

(b) Construction Status Report (All Multifamily Developments). All multifamily Developments must submit a construction status report. Construction status reports shall be due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire Development is complete as evidenced by one of the following: Certificates of occupancy for each building, the Architect's Certificate(s) of Substantial Completion (AIA Document G704 or equivalent form) for the entire Development, the final Application and Certificate for Payment (AIA Document G702 and G703), or an equivalent form approved for submission by the construction lender and/or investor. For Competitive Housing Tax Credit Developments, the initial report is due by October 10th following the year of award (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans), and for Developments awarded under the Department's Multifamily Direct Loan programs only, the initial report is due by the 90th calendar day after loan closing. For Tax Exempt Bond Developments, the initial construction status report must be submitted as part of the Post Bond Closing Documentation and is due by the 60th calendar day following closing on the bonds. A Construction Status Report not submitted by the due date will incur an extension fee in accordance with §11.901 of this title (relating to Fee Schedule). The initial report

for all multifamily Developments shall consist of the items identified in paragraphs (1) - (6) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in paragraphs (4) - (6) of this paragraph and must include any changes or amendments to items in paragraphs (1) - (3) of this subsection if applicable:

(1) The executed partnership agreement with the investor or, for Developments receiving an award only from the Department's Direct Loan Program, other documents setting forth the legal structure and ownership. If identified Guarantors or Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amendment must be requested in accordance with §10.405 of this subchapter, and the new Guarantors and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee);

(2) The executed construction contract for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(3) The construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(4) The most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor) for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(5) All Third Party construction inspection reports not previously submitted. If the lender and/or investor does not require third party construction inspection reports, the Development Owner must hire a Third Party inspector to perform these inspections on a quarterly basis, and the Third Party inspector, or Third Party lender or investor, must submit the inspection reports to the Department. Third Party construction inspection reports must include, at a minimum, the date construction started (initial submission only), a discussion of site conditions as of the date of the site visit, current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date; and

(6) Minority Owned Business Report (HTC only) showing the attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as required and further described in Tex. Gov't Code §2306.6734.

(c) LURA Origination.

(1) The Development Owner must request origination of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. A copy of the fully executed, recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives a copy of the fully executed, recorded LURA.

(2) LURAs for Direct Loan awardees will be prepared by the Department's Legal Division and executed at loan closing.

(d) Cost Certification (Competitive and Non-Competitive HTC, and related activities only). The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. For Non-Competitive HTC Developments, the amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's determination as of each building's placement in service. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 120% of the amount of credits reflected in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 120% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director or designee. All credit increases are subject to the Tax-Exempt Bond Credit Increase Request Fee as described in Chapter 11, Subchapter E of this Part (relating to Fee Schedule, Appeals, and other Provisions). The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) For Competitive HTC Developments, Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code. For Tax-Exempt Bond Developments, Development Owners must file cost certification documentation no later than May 15 following the first year of the Credit Period.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator. In accordance with Tex. Gov't Code §2306.6724(g), IRS Form(s) 8609 will be issued no later than the 120th day following the date on which the Department receives a complete cost certification package, and the Development Owner has fulfilled any requests for information.

(3) The cost certification package must meet the conditions as stated in subparagraphs (A) - (G) of this paragraph. The Development Owner has:

(A) Provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) Provided a complete final cost certification package in the format prescribed by the Department. As used herein, a com-

plete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxiv) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Requirements include:

(i) Owner's signed and notarized Statement of Certification verifying the CPA firm's licenses and validity, including any restrictions;

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors;

(iii) Evidence of Qualified Nonprofit or CHDO Participation;

(iv) Certification and evidence of Historically Underutilized Business (HUB) Participation;

(v) Development Team List;

(vi) Development Summary with Architect's Certification;

(vii) Development Change Documentation;

(viii) As Built Survey;

(ix) A copy of the fully executed Closing Statement for each parcel of land and/or buildings purchased and included in the Development;

(x) Development Owner's Title Policy for the Development;

(xi) Title Policy Update;

(xii) Placement in Service;

(xiii) Evidence of Placement in Service;

(xiv) Architect's Certification of Completion Date and Date Ready for Occupancy (for Developments located in areas where Certificates of Occupancy (COs) are not issued by a local government or rehabilitation Developments that cannot provide COs);

(xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election;

(xvi) Independent Auditor's Report;

(xvii) Independent Auditor's Report of Bond Financing;

(xviii) Development Cost Schedule;

(xix) Contractor's Application for Final Payment (G702/G703) for the General Contractor, all prime subcontractors, Affiliated Contractors, and Related Party Contractors;

(xx) Additional Documentation of Offsite Costs;

(xxi) Rent Schedule;

(xxii) Utility Allowances;

(xxiii) Annual Operating Expenses;

(xxiv) 30 Year Rental Housing Operating Pro Forma;

(xxv) Current Operating Statement in the form of a trailing twelve month statement;

(xxvi) Current Rent Roll;

(xxvii) Summary of Sources and Uses of Funds;

(xxviii) Final Limited Partnership Agreement with all amendments and exhibits;

(xxix) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department);

(xxx) Architect's Certification of Accessibility Requirements;

(xxxi) Development Owner Assignment of Individual to Compliance Training;

(xxxii) TDHCA Compliance Training Certificate (not older than two years from the date of cost certification submission);

(xxxiii) TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division (IRS Form(s) 8609 will not be issued without a TDHCA Final Inspection Clearance Letter); and

(xxxiv) Other Documentation as Required, including but not limited to conditions to be satisfied at cost certification as reflected in the Development's latest Underwriting Report;

(C) Informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this subchapter (relating to Amendments and Extensions) and §10.406 of this subchapter (relating to Ownership Transfers (§2306.6713));

(D) Paid all applicable Department fees, including any past due fees;

(E) Met all conditions noted in the Department underwriting report, Determination Notice, and Commitment;

(F) Corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the corrective action period and/or with any uncorrected issues of noncompliance outside of the corrective action period will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Director or designee; and

(G) Completed an updated underwriting evaluation in accordance with Chapter 11, Subchapter D of this Part based on the most current information at the time of the review.

§10.405. Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6712). The Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsection at any time after the initial Board approval of the Development (§2306.6731(b)). The Board may deny an amendment request and subsequently may rescind any Commitment or Determination Notice issued for an Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment

to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Notification Items. The Department must be notified of the changes described in subparagraphs (A) - (F) of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request and any additional information or documentation requested. Notification items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department and include:

(A) Changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5%;

(B) Minor modifications to the site plan that will not significantly impact development costs, including, but not limited to, relocation or rearrangement of buildings on the site (as long as the number of residential and non-residential buildings remains the same), and movement, addition, or deletion of ingress/egress to the site;

(C) Increases or decreases in net rentable square footage or common areas that do not result in a material amendment under paragraph (4) of this subsection;

(D) Changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) Changes in Developers or Guarantors (notifications for changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period are not required) with no new Principals (who were not previously checked by Previous Participation review; and

(F) Any other amendment not identified in paragraphs (3) and (4) of this subsection.

(3) Non-material amendments. The Executive Director or designee may administratively approve all non-material amendments, including, but not limited to:

(A) Any amendment that is determined by staff to exceed the scope of notification acknowledgement, as identified in paragraph (2) of this subsection but not to rise to a material alteration, as identified in paragraph (4) of this subsection;

(B) Changes in Developers or Guarantors (excluding changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period) not addressed in §10.405(a)(2)(E). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in Chapter 11 of this title and the credit limitation described in §11.4(a) of this title; and

(C) For Exchange Developments only, requests to change elections made on line 8(b) of the IRS Form(s) 8609 to group buildings together into one or more multiple building projects. The request must include an attached statement identifying the buildings in the project. The change to the election may only be made once during the Compliance Period.

(4) Material Amendments. Amendments considered material pursuant to this paragraph must be approved by the Board. When an amendment request requires Board approval, the Development Owner must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

(A) A significant modification of the site plan;

(B) A modification of the number of Units or bedroom mix of Units;

(C) A substantive modification of the scope of tenant services;

(D) A reduction of 3% or more in the square footage of the Units or common areas;

(E) A significant modification of the architectural design of the Development;

(F) A modification of the residential density of at least 5%;

(G) A request to implement a revised election under §42(g) of the Code prior to filing of IRS Form(s) 8609;

(H) Exclusion of any requirements as identified in Chapter 11, Subchapter B of this title (relating to Site and Development Requirements and Restrictions) and Chapter 11, Subchapter C of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or

(I) Any other modification considered material by the staff and therefore required to be presented to the Board as such.

(5) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department before a request for amendment will be acted upon.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to

the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) For amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence noted in either clause (i) or (ii) of this subparagraph must be presented to the Department to support the amendment:

(i) In the event of a request to implement (rent to a household at an income or rent level that exceeds the approved AMI limits established by the minimum election within the Development's Application or LURA) a revised election under §42(g) of the Code prior to an Owner's submission of IRS Form(s) 8609 to the IRS, Owners must submit updated information and exhibits to the Application as required by the Department; or

(ii) For all other requests for reductions in the total number of Low-Income Units or reductions in the number of Low-Income Units at any rent or income level, prior to issuance of IRS Form(s) 8609 by the Department, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) If it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for 24 months from the time that the amendment is approved.

(b) Amendments to Contracts and LURAs. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information related to any financial impact on the Development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions). The Department may order or require the Development Owner to order a Market Study or appraisal at the Development Owner's expense. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department before a request for amendment will be acted upon. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), 24 CFR Part 93 (NHTF Interim Rule), Chapter 1 of this title (relating to Administrative Requirements), Chapter 11 of this title (relating to Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), Tex. Gov't Code, Chapter 2306, and the Fair Housing Act. For Tax-Exempt Bond Developments, compliance with their Regulatory Agreement and corresponding bond financing documents. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material LURA Amendments. The Executive Director or designee may administratively approve all LURA amendments not defined as Material LURA Amendments pursuant to paragraph (2) of this subsection. A non-material LURA amendment may include but is not limited to:

(A) HUB participation removal. Removal of a HUB participation requirement will only be processed as a non-material LURA amendment after the issuance of IRS Form(s) 8609 and requires that the Department find that:

(i) The HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(ii) the participation by the HUB has been substantive and meaningful, or would have been substantive or meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operating of affordable housing; and

(iii) where the HUB will be replaced as a general partner or special limited partner that is not a HUB and will sell its ownership interest, an ownership transfer request must be submitted as described in §10.406 of this subchapter;

(B) A change resulting from a Department work out arrangement as recommended by the Department's Asset Management Division;

(C) A change in the Right of First Refusal period as described in amended §2306.6726 of the Tex. Gov't Code;

(D) Where the Board has approved a de minimis modification of the Unit Mix or bedroom mix of Units to increase the Development's accessibility;

(E) In accordance with HOMEFires, Vol. 17 No. 1 (January 2023, as may be amended from time to time) bifurcation of the term of a HOME or NSP LURA with the Department that requires a longer affordability period than the minimum federal requirement, into a federal and state affordability period;

(F) A change in Target Population if the Elderly restrictions in the LURA expired at the end of the Compliance Period or the Federal Affordability Period (as applicable), and the amendment is requested within one year of expiration and contains a certification from the Development Owner that the Development still qualifies as Elderly;

(G) Amendments necessary to opt into the 2025 HOME final rule in accordance with §10.601(g) of this chapter, relating to the 2025 HOME final rule; or

(H) A correction of error.

(2) Material LURA Amendments. Development Owners seeking LURA amendment requests that require Board approval must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting at which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting (§2306.6717(a)(4)). The Board must consider the following material LURA amendments:

(A) Reductions to the number of Low-Income Units;

(B) Changes to the income or rent restrictions;

(C) Changes to the Target Population;

(D) The removal of material participation by a Non-profit Organization as further described in §10.406 of this subchapter;

(E) The removal of material participation by a HUB prior to filing of IRS Form(s) 8609;

(F) Any amendment that pertains to a right enforceable by a tenant or other third party under the LURA; or

(G) Any LURA amendment deemed material by the Executive Director.

(3) Prior to staff taking a recommendation to the Board for consideration, the Development Owner must provide reasonable notice and hold a public hearing regarding the requested amendment(s) at least 20 business days prior to the scheduled Board meeting where the request will be considered. A Development Owner is required to submit a copy of the notification with the amendment request. If the amendment pertains to a right enforceable by a tenant or other third party, the Development Owner must explain why performance of the original condition is impossible or demonstrate that Development would no longer be financially feasible, in accordance with the rules adopted in Chapter 11 Subchapter D of this part relating to Underwriting and Loan Policy. If a LURA amendment is requested prior to issuance of IRS Form(s) 8609 by the Department, notification must be provided to the recipients described in subparagraphs (A) - (E) of this paragraph. If an amendment is requested after issuance of IRS Form(s) 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) - (B) of this paragraph. Notifications include:

(A) Each tenant of the Development;

(B) The current lender(s) and investor(s);

(C) The State Senator and State Representative of the districts whose boundaries include the Development Site;

(D) The chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and

(E) The county commissioners of the county in which the Development Site is located (if the Development Site is located outside of a municipality).

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) - (D) of this paragraph:

(A) The Development Owner's name, address and an individual contact name and phone number;

(B) The Development's name, address, and city;

(C) The change(s) requested; and

(D) The date, time, and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three business days after the date of the public hearing.

(6) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recording in the county where the Development is located. For some Programs, a Contract Amendment or amendment to the Loan Documents may also be needed, in the determination of the Department's Legal Division.

(c) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10% Test (including submission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least 30 calendar days in advance of the applicable original deadline will not be required to submit an extension fee as described in §11.901 of this title. Any extension request submitted fewer than 30 days in advance of the applicable original deadline or after the original deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10% Test deadline(s), a point deduction evaluation will be completed in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The exceptions to the ownership transfer process in this subsection are applicable.

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals, or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval, but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as

soon as possible of the revised ownership structure and ownership contact information.

(5) Changes resulting from a deed-in-lieu of foreclosure do not require Executive Director approval. However, advance notification must be provided to both the Department and to the tenants at least 30 days prior to finalizing the transfer. This notification must include information regarding the applicable rent/income requirements post deed-in-lieu of foreclosure.

(6) Changes resulting from a foreclosure do not require Executive Director approval. However, a Development that is subject to the 2025 HOME final rule as described in §10.601(g) of this chapter must provide advance notification to both the Department and to all households at least 30 days prior to the foreclosure sale. This notification must include information regarding the applicable rent/income requirements post foreclosure.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Persons and Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this Subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(5) Any initial operating, capitalized operating, or replacement reserves funded with an allocation from the HOME American Rescue Plan (HOME-ARP) and Special Reserves required by the Department must remain with the Development.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff will refer the matter to the Enforcement Committee for debarment consideration pursuant to §2.401 of this title (relating to Enforcement, Debarment from Participation in Programs Administered by the Department). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs), an Applicant may request a change to its ownership structure to add Principals or to remove Principals provided not all controlling Principals identified in the Application will be removed. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s. In addition, for Competitive HTC Developments, changes in the ownership structure for the addition of a public facility corporation, a housing finance corporation, or a public housing authority prior to the issuance of 8609s that will result in a 100% property tax exemption that was not previously reflected in the Application, require a resolution of support from the municipality, or if the Development is not within a municipality or its Extra Territorial Jurisdiction (ETJ), a resolution of support from the commissioners court.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package. However, for ownership transfers that occur on or after April 30, 2026, the Department will require the CHDO to renew their certification using the new certification package that will include the 2025 HOME final rule requirements.

(3) Exceptions to paragraphs (1) and (2) of this subsection may be made on a case by case basis if the Development (for MFDL) is past its Federal Affordability Period or (for HTC Developments) is past its Compliance Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this subchapter. The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Devel-

opment Owner and it determines to sell its ownership interest, after the issuance of IRS Form(s) 8609, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the LURA does not require it or the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved. The removal of a HUB requirement prior to filing of IRS Form(s) 8609 is subject to the procedure described in §10.405(b)(2) of this Chapter (relating to Material LURA Amendments).

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, terms of any new financing introduced as a result of the transfer, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre- and post-transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(12)(B) of Subchapter C of this title (relating to Required Documentation for Application Submission);

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(12)(C) of this title (relating to Required Documentation for Application Submission);

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted as further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30-day period has expired. Additional notification requirements may apply under 10 TAC §10.607, relating to Reporting Requirements; and

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of this title (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees, and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing Requirements and Written Policies and Procedures). The Development Owner on record with the Department will be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an ownership transfer has been approved by the Department. In the event a transferring Development has a history of uncorrected UPCS or NSPIRE violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this section (relating to Reserve Accounts).

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this title (relating to Fee Schedule).

§10.407. Right of First Refusal.

(a) General. This section applies to Development Owners that agreed to offer a Right of First Refusal (ROFR) to a Qualified Entity or as applicable a Qualified Nonprofit Organization, as memorialized in the applicable LURA. For the purposes of this section, a Qualified Nonprofit Organization also includes an entity 100% owned by a Qualified Nonprofit Organization pursuant to §42(h)(5)(C) of the Code and operated in a similar manner. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and enter into an agreement to sell the Property to a Qualified Entity, or as applicable a Qualified Nonprofit Organization without going through the ROFR process outlined in this section, unless otherwise restricted or prohibited and only in the following circumstances:

(A) The LURA includes a 90-day ROFR and the Development Owner is selling to a Qualified Nonprofit Organization;

(B) The LURA includes a two-year ROFR and the Development Owner is selling to a Qualified Nonprofit Organization that meets the definition of a Community Housing Development Organization (CHDO) under 24 CFR Part 92, as approved by the Department;

(C) The LURA includes a 180-day ROFR, and the Development Owner is selling to a Qualified Entity that meets the definition of a CHDO under 24 CFR Part 92, or to an entity that includes a CHDO as one of its controlling members, as approved by the Department, or to the public housing authority or public facility corporation that owns the fee title to the Development Owner's leasehold estate; or

(D) The Multifamily Direct Loan LURA requires a new Owner to be a qualified CHDO or has a ROFR Period for purchase by a CHDO, and the Development is subject to the 2013 or 2025 HOME final rule, and the Development Owner is selling or conveying the Development to another CHDO approved by the Department. The entity will have to be structured in accordance with the applicable HOME rule, and the requirements in Chapter 13 of this title.

(2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, every effort will be made to harmonize the provisions. If the conflict cannot be resolved, requirements in the LURA will supersede this subchapter. If there is a conflict between the Development's LURA and Tex. Gov't Code Chapter 2306, every effort will be made to harmonize the provisions. A Development Owner may request a LURA amendment to make the ROFR provisions in the LURA consistent with Tex. Gov't Code Chapter 2306 at any time.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under the applicable LURA and §10.408 of this Subchapter) until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers pursuant to §10.406 of this subchapter. Thus, if a proposed purchaser is identified by the Owner in accordance with paragraph (1) of this subsection or in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Nonprofit Organization or Qualified Entity that is considered an ineligible entity under the Department's rules. In addition, ownership transfers to a Qualified Entity or as applicable a Qualified Nonprofit Organization pursuant to the ROFR process are subject to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) If there are multiple buildings in the Development, the end of the 15th year of the Compliance Period will be based upon the date the last building(s) began their credit period(s). For example, if five buildings in the Development began their credit periods in 2007 and one in 2008, the 15th year would be 2022. The ROFR process is triggered upon:

(A) The Development Owner's determination to sell the Development to an entity other than as permitted in paragraph (1) of this subsection; or

(B) The simultaneous transfer or concurrent offering for sale of a General Partner's and limited partner's interest in the Development Owner's ownership structure.

(7) The ROFR process is not triggered if a Development Owner seeks to transfer the Development to a newly formed entity:

(A) That is under common control with the Development Owner; and

(B) The primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the Development using assistance administered through a state financing program.

(8) This section applies only to a Right of First Refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity. The enforceability of a contractual agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity may be impacted by the Development Owner's commitments at Application and recorded LURA.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §11.304 of this title (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. In either case the documentation used to establish Fair Market Value will be part of the ROFR property listing on the Department's website. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of the categories listed in subparagraphs (A) and (B) of this paragraph:

(A) The principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five year period immediately preceding the date of said notice); and

(B) All federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than one, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units. Documentation submitted to verify the Minimum Purchase Price calculation will be part of the ROFR property listing on the Department's website.

(c) Required Documentation. Upon establishing the ROFR offer price, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, documentation must be submitted as directed in the Post Award Activities Manual, which includes:

(1) ROFR fee as identified in §11.901 of this title (relating to Fee Schedule);

(2) A notice of intent to the Department;

(3) Certification that the Development Owner has provided, to the best of their knowledge and ability, a notice of intent to all additional required persons and entities in subparagraph (A) of this paragraph and that such notice includes, at a minimum the information in subparagraph (B) of this paragraph;

(A) Copies of the letters or emailed notices provided to all persons and entities listed in clauses (i) to (vi) of this subparagraph as required by this paragraph and applicable to the Development at the time of the submission of the ROFR documentation must be attached to the Certification:

(i) All tenants and tenant organizations, if any, of the Development;

(ii) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(iii) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(iv) Presiding officer of the Governing Body of the county in which the Development is located;

(v) The local housing authority, if any; and

(vi) All prospective buyers maintained on the Department's list of prospective buyers.

(B) Letters must include, at a minimum, all of the information required in clauses (i) to (vii) of this subparagraph and must not contain any statement that violates Department rules, statute, Code, or federal requirements:

(i) The Development's name, address, city, and county;

(ii) The Development Owner's name, address, individual contact name, phone number, and email address;

(iii) Information about tenants' rights to purchase the Development through the ROFR;

(iv) The length of the ROFR posting period;

(v) The ROFR offer price;

(vi) A physical description of the Development, including the total number of Units and total number of Low-Income Units; and

(vii) Contact information for the Department staff overseeing the Development's ROFR application.

(4) Documentation evidencing any contractual ROFR between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity, along with evidence that such Qualified Nonprofit Organization or Qualified Entity is in good standing in the state of its organization;

(5) Documentation verifying the ROFR offer price of the Property:

(A) If the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Entity or Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) If the Development Owner chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within 30 calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) If the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(6) Description of the Property, including all amenities;

(7) Copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(8) A current title commitment or policy not older than six months prior to the date of submission of the ROFR request or the most recent title policy along with a title endorsement or nothing further certificate not older than six months prior to the date of submission of the ROFR request;

(9) The most recent Physical Needs Assessment, pursuant to Tex. Gov't Code §2306.186(e) conducted by a Third-Party. If the PNA/SCR identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to proceed with a Right of First Refusal Request;

(10) Copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent 12 consecutive months (financial statements should identify amounts held in reserves);

(11) The three most recent consecutive annual operating statements (audited would be preferred);

(12) Detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds;

(13) Current and complete rent roll for the Property; and

(14) If any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases.

(d) Posting and offers. Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity or as applicable any Qualified Nonprofit Organization identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once any deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and notify entities registered to the email list maintained by the Department of the availability of the Property at a price as determined under this section. The Department will notify the Development Owner when the Property has been listed. The ROFR posting period commences on the date the Property is posted for sale on the Department's website. During the ROFR posting period, a Qualified Nonprofit Organization or Qualified Entity can submit an offer to purchase as follows:

(1) if the LURA requires a 90-day ROFR posting period with no priority for any particular kind of Qualified Nonprofit Organization or tenant organization, any Qualified Nonprofit Organization or tenant organization may submit an offer to purchase the property; or

(2) If the LURA requires a two-year ROFR posting period, a Qualified Nonprofit Organization may submit an offer to purchase the Property as follows:

(A) During the first six months of the ROFR posting period, only a Qualified Nonprofit Organization that is a Community

Housing Development Organization (CHDO) under 24 CFR Part 92, or that is 100% owned by a CHDO, as approved by the Department, may submit an offer;

(B) During the next six months of the ROFR posting period, only a Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or that is 100% owned by Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or a tenant organization may submit an offer; and

(C) During the final 12 months of the ROFR posting period, any Qualified Nonprofit Organization may submit an offer; or

(3) If the LURA requires a 180-day ROFR posting period, a Qualified Entity may submit an offer to purchase the Property consistent with the subparagraphs of this paragraph.

(A) During the first 60 days of the ROFR posting period, only a Qualified Entity that is:

(i) a CHDO under 24 CFR Part 92, or to an entity that includes a CHDO as one of its controlling members or general partners, as approved by the Department, may submit an offer. In accordance with 24 CFR Part 92, Developments committed HOME CHDO funding on or after August 23, 2013, and still within the Federal Affordability Period must have a CHDO or its wholly owned entity (as applicable) as its only controlling entities and no other entities are eligible;

(ii) if the public housing authority or public facility corporation owns the fee title to the Development Owner's leasehold estate:

(I) a public housing authority; or

(II) a public facility corporation created by a public housing authority under Chapter 303, Local Government Code; or

(iii) controlled by an entity described by either clause (i) or (ii) of this subparagraph.

(B) During the second 60 days of the ROFR posting period, only a Qualified Entity as described by Tex. Gov't Code §2306.6706, or that is controlled by Qualified Entity as described by Tex. Gov't Code §2306.6706, or a tenant organization such may submit an offer.

(C) During the final 60 days of the ROFR posting period, any Qualified Entity may submit an offer.

(4) If the Multifamily Direct Loan LURA for a property funded out of the CHDO set-aside and subject to the 2025 HOME final rule requires a 60-day ROFR posting period, a CHDO approved by the Department may submit an offer to purchase the property.

(5) If the LURA does not specify a required ROFR posting timeframe or is unclear on the required ROFR posting timeframe and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997, is required to post for a 90-day ROFR period, and any Development that received a tax credit allocation on or after September 1, 1997, and until September 1, 2015, is required to post for a two year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015, is required to post for a 180-day ROFR period as described in Tex. Gov't Code, §2306.6726.

(e) Acceptance of offers. A Development Owner may accept or reject any offer received during the ROFR posting period; provided however, that to the extent the LURA gives priority to certain classifications of Qualified Nonprofit Organizations or Qualified Entities to make offers during certain portions of the ROFR posting period, the Development Owner can only negotiate a purchase contract with such classifications of entities during their respective periods. For example, during the CHDO priority period, the Development Owner may only accept an offer from and enter into negotiations with a Qualified Nonprofit Organization or Qualified Entity in that classification. A property may not be transferred under the ROFR process for less than the Minimum Purchase Price, but if the sequential negotiation created by statute yields a higher price, the higher price is permitted.

(f) Satisfaction of ROFR.

(1) A Development Owner that has posted a Property under the ROFR process is deemed to have satisfied the ROFR requirements in the following circumstances:

(A) The Development Owner does not receive any bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(B) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(C) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), and the Development Owner received no other bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period; or

(D) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period at or above the posted ROFR offer price; or

(2) A Development Owner with a LURA that identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR will satisfy the ROFR if:

(A) The identified beneficiary is in existence and conducting business;

(B) The Development Owner offers the Development to the identified beneficiary pursuant to the terms of the ROFR;

(C) If the ROFR includes a priority for a certain type of Qualified Entity (such as a CHDO) to have the first opportunity make an offer to acquire the Development, the identified beneficiary meets such classification; and

(D) The identified entity declines to purchase the Development in writing, and such evidence is submitted to and approved by the Department.

(g) Non-Satisfaction of ROFR. A Development Owner that has posted a Property under the ROFR process does not satisfy the ROFR requirements in the following circumstances:

(1) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), and the Development Owner does not accept the offer;

(2) The LURA identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR, and such entity no longer exists or is no longer conducting business and the Development Owner received other bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers;

(3) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and then fails to accept any of such other offers;

(4) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, and such failure is determined to be the fault of the Development Owner;

(5) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers; or

(6) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), and the Development Owner fails to accept any of such offers.

(h) Activities Following ROFR.

(1) If a Development Owner satisfies the ROFR requirement pursuant to subsection (f)(1) - (2) of this section, it may request a Preliminary Qualified Contract (if such opportunity is available under §10.408 of this Subchapter) or proceed with the sale to an entity that is not a Qualified Nonprofit Organization or Qualified Entity at or above the ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation).

(2) Following notice that the ROFR requirement has been met, if the Development Owner does not post the Property for Qualified Contract in accordance with §10.408 of this Subchapter or sell the Property to an entity that is not a Qualified Nonprofit Organization or Qualified Entity within 24 months of the Department's written indication that the ROFR has been satisfied, the Development Owner must follow the ROFR process for any subsequent transfer.

(3) If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR offer price that is higher than the originally posted ROFR offer price until 24 months has expired from the Department's written indication that the ROFR has not been satisfied. The Development Owner may market the Property for sale and sell the Property to a Qualified Nonprofit Organization or Qualified Entity during this 24-month period in accordance with subsection (a)(1) of this section.

(i) Sale and closing.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this Subchapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Award Activities Manual, the final sales contract with all amendments.

(2) If the closing price is materially less than the ROFR offering price or the terms and conditions of the sale change materially from what was submitted in the ROFR posting, in the Department's sole determination, the Development Owner must go through the ROFR process again with a revised ROFR offering price equal to the reduced closing price or adjusted terms and conditions based upon the revised terms, before disposing of the Property.

(j) Appeals. A Development Owner may appeal a staff decision in accordance with §11.902 of this title (relating to Appeals Process).

§10.408. Qualified Contract Requirements.

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one year, the Extended Use Period will expire. This section of this subchapter provides the procedures for the submittal and review of a Qualified Contract Request.

(b) Eligibility. Development Owners who received an award of credits on or after January 1, 2002, are not eligible to request a Qualified Contract prior to the 30 year anniversary of the date the property was placed in service (§2306.185); if the property's LURA indicates a commitment to an Extended Use Period beyond 30 years, the Development Owner is not eligible to request a Qualified Contract until the expiration of the Extended Use Period. Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year preceding the last year of the Initial Affordability Period, provided it is not precluded by the terms of the LURA, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an

election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 2005 and one began in 2006, the 15th year would be 2020.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 2004 and a subsequent allocation and began the credit period in 2006, the 15th year would be 2020.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) The Development does not have any uncorrected issues of noncompliance outside the corrective action period;

(B) There is a Right of First Refusal (ROFR) connected to the Development that has been satisfied; and

(C) The Compliance Period under the LURA has expired; and

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §11.901 of this title (relating to Fee Schedule);

(C) Copy of all regulatory agreements or LURAs associated with the Property (non-TDHCA); and

(D) Copy of a Physical Needs Assessment (PNA), conducted by a Third Party, that is no more than 12 months older than the request date. If the PNA identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to submit a Qualified Contract Request.

(3) The pre-request will not bind the Development Owner to submit a Qualified Contract Request and does not start the One Year Period (1YP). A review of the pre-request will be conducted by the Department within 90 days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request any time after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) A completed application and certification;

(B) The Qualified Contract price calculation worksheets completed by a licensed Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) A thorough description of the Development, including all amenities;

(D) A description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) A current title report;

(F) A current appraisal with the effective date within six months of the date of the QC Request and consistent with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy);

(G) A current Phase I Environmental Site Assessment (and Phase II, if necessary) with the effective date within six months of the date of the QC Request and consistent with Chapter 11, Subchapter D of this title;

(H) A copy of the most recent Physical Needs Assessment of the property conducted by a Third Party, if different from the assessment submitted during the preliminary qualified contract request, consistent with Chapter 11, Subchapter D of this title;

(I) A copy of the monthly operating statements for the Development for the most recent 12 consecutive months;

(J) The three most recent consecutive annual operating statements (audited would be preferred) for the Development;

(K) A detailed set of photographs of the Development, including interior and exterior of representative units and buildings, and the property's grounds;

(L) A current and complete rent roll for the Development;

(M) A certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) If any portion of the land or improvements is leased, copies of the leases;

(O) The Qualified Contract Fee as identified in §11.901 of this title (relating to Fee Schedule); and

(P) Additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed 6% of the QC Price.

(3) Within 90 days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calcula-

tion will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) Outstanding indebtedness secured by, or with respect to, the building;

(2) Distributions to the Development Owner of any and all cash flow, including incentive management fees, capital contributions not reflected in outstanding indebtedness or adjusted investor equity, and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(3) All equity contributions will be adjusted based upon the lesser of the consumer price index or 5% for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last month of the year; and

(4) These guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing in accordance with §11.902 of this title (relating to Appeals Process). A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §11.902 of this title (relating to Appeals Process) and Tex. Gov't Code §2306.0321 and §2306.6715.

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner or broker contact information will also be provided to interested parties. The Development Owner is responsible for providing staff any requested information to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

(1) Allow access to the Property and tenant files;

(2) Keep the Department informed of potential purchasers; and

(3) Notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA for the remainder of the Extended Use Period. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase, but the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three-year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three-year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Development.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the applicable requirements in Subchapters F and G of this chapter (relating to Uniform Multifamily Rules).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 10, 2026.

TRD-202601581

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: January 30, 2026
For further information, please call: (512) 475-3959

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SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §§10.601, 10.607, 10.611, 10.613, 10.614, 10.621, 10.622, 10.625

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to §10.601 Compliance Monitoring Objectives and Applicability; §10.607 Reporting Requirements; §10.611 Determination, Documentation and Certification of Annual Income; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.621 Property Condition Standards; §10.622 Special Rules Regarding Rents and Rent Limit Violations; and §10.625 Events of Noncompliance, with changes to the proposed text as published in the January 30, 2026 issue of the *Texas Register* (51 TexReg 489). The rules will be republished. The amendments add new program requirements to developments that are subject to the new HOME Final rule. Additionally, the amendments clarify that non-operable elevators must be reported to the Department within 72 hours, and rent payment made on time and in full must be accepted if the household does not have any prior outstanding rent balance(s) due.

The purpose of the adoption of amendments is to codify the new HOME Final rule requirements, clarify when non-operable elevators must be reported to the Department and ensure rent is accepted by developments when payment is made on time and in full.

The Department has analyzed this adoption of amendments, and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the adoption of amendments would be in effect, the adopted amendment to the rule will not create or eliminate a government program;

2. The adopted amendment to the rule will not require a change in the number of employees of the Department and it does reduce workload to a degree that any existing employee position is eliminated.

3. The adopted amendment to the rule will not require additional future legislative appropriations.

4. The adopted amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department

5. The adopted amendment to the rule will not create a new regulation;

6. The adopted amendment to the rule will not repeal an existing regulation;

7. The adopted amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The adopted amendment to the rule will neither positively nor negatively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the adoption of the amendment and determined that there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The adoption of the amendment does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the adopted amendment to the rule is in effect, the public benefit anticipated as a result of the action will be a rule in compliance with the new HOME Final rule. There will not be any economic cost to any individual required to comply with the amendment.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the adopted amendment to the rule is in effect, enforcing or administering the rule action does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. Public comment was accepted from January 30, 2026, through March 3, 2026. Comment was received from eleven commenters. Comments regarding the amendments were accepted in writing and by e-mail with comments received from:

Brenda Jimenez, Property Manager, Residences at Lake Waco

Melissa Petitt, Property Manager, Richmond Senior Village

Lorena Caballero-Chavez, Property Manager, Hibiscus Village

Tayna Lavelle, Policy Specialist- Housing and Transportation, Disability RIGHTS Texas

Kathy Green, Director, State and Federal Strategy, AARP Texas

Sharon Underwood, Tenant Advocate

Robert Dryman, President, Brownstone Residential, LLC

Texas Apartment Association, Texas Realtors and Texas Association of Builders

Maria Watkins, Director of Compliance, FDI Management Group

Dena Moreland, Compliance Director, Accolade Property Management

Sidney Beaty, Research Analyst, Texas Housers

Rule Section §10.613(a) and 10.613(b)

COMMENT SUMMARY: Commenter 8 requests immediate removal of 10 TAC §10.613(a) and related reference in 10 TAC §10.613(b) regarding the 30-day notice requirement under the CARES Act. Commenter 8 goes on to state that other federal housing agencies, The Federal Housing Finance Agency (FHFA), the U.S. Department of Housing and Urban Development (HUD), and the U.S. Department of Agriculture (USDA) all have eliminated the 30-day notice requirements that were previously imposed during COVID-19 and continuing to require the 30-day notice in the Compliance Monitoring rule creates confusion and conflicts with the timelines adopted by the Texas Legislature in Senate Bill 38. Commenter 8 also requests the removal or revision of the corresponding language in §10.613(b) to eliminate any state imposed 30-day requirement not mandated by federal statute or regulation.

STAFF RESPONSE: Multifamily direct loans programs, specifically HOME, TCAP-RF, NSP and HOME-ARP developments regulations require that to terminate a lease, the owner must provide a 30-day written notice. Staff did not accept Commenter 8's suggestion to revise §10.613(b) as a 30-day notification requirement prior to termination of lease for nonpayment of rent is still required under the CARES Act. Furthermore, HUD on March 13, 2026, has withdrawn its interim final rule because of litigation regarding notice requirements regarding this change, and in its rulemaking USDA has stated that the CARES Act 30 day requirement is still in effect. No change to the rule is made in response to this comment, but the Department will continue to monitor this topic.

Rule Section §10.613(o)(3)(A)

COMMENT SUMMARY: Commenter 10 indicates that the requirement to submit a copy of the lease template for designated units to the Department creates an additional administrative burden for all parties. Commenter 10 also suggests that for a property utilizing the Texas Apartment Association (TAA) lease and addenda, the submission of these form templates should be exempted, because TAA and the Department have a strong working relationship and updates to lease forms will reflect Departmental policy changes. Commenter 10 also suggests that the lease forms can be effectively monitored during file audits. Commenter 9 seeks clarification if the lease template required to be submitted for approval is for each development, or once per Management Company.

STAFF RESPONSE: Staff did not accept suggestions from Commenter 10 because this requirement only pertains to Units subject to this provision in 2025 HOME final rule. The requirement to submit lease templates to the Department is a federal requirement in the new 2025 HOME Final Rule regardless of the template implemented. As this will also be a new requirement for the Department to receive, review and approve lease templates for designated units, the Department anticipates this review being done at property level, since the approval is for a property and not a Management Agent's portfolio. The Department will ensure whatever procedures it adopts will be as efficient and expedient as possible for owners and developments. No change to the rule is made in response to this comment.

Rule Section §10.613(o)(3)(D)

COMMENT SUMMARY: Commenter 9 seeks clarification; if the provisions are already included in the TAA Lease and Affordable Addendum, what do properties need to do differently if the property is layered with other TDHCA programs.

STAFF RESPONSE: The requirement is only applicable for Units subject to this provision in the 2025 HOME Final Rule and only if the property utilizes different lease templates for designated units than other units on the property. The Department has not encountered any properties that are using different lease templates for different program units, however, this provision was included as a safeguard in case a property was using different lease templates. No change to the rule is made in response to this comment.

Rule Section §10.613(o)(4)

COMMENT SUMMARY: Commenter 9 states that adding the requirement for all notices to vacate be submitted to the Department is a bit extreme and would cause undue financial burden to properties, etc. Commenter 9 suggests implementing this requirement would result in the need for additional staff to just oversee this one task. Commenter 9 asks if this requirement is for non-payment of rent, or all other violations. Commenter 10 does not support the requirement that all notices to vacate must be submitted to the Department either upon issuance or within 14-days because it would create a significant administrative burden for property owners and the Department. Commenter 10 also shares that this required increase in reporting offers limited regulatory value and introduces unnecessary procedural complications during urgent circumstances. Commenter 10 is also concerned that adding this requirement would put the Department at risk of assuming oversight responsibilities beyond its operational capacity and could expose it to increased liability.

STAFF RESPONSE: Staff did not accept suggestions from Commenter 9 and 10 because this only impacts Units subject to this provision of the 2025 HOME rule. The requirement to submit copies of notices to vacate to the Department is a federal requirement in the new 2025 HOME Final Rule and will apply to all notices to vacate regardless of reason. No change to the rule is made in response to this comment.

Rule Section §10.621(K)

COMMENT SUMMARY: Commenters 1, 2 and 3 oppose reporting non-operable elevators within 24 hours because it adds another administrative burden on property owners and managers and will not result in the issue being addressed sooner. Commenter 1 suggests placing penalties on elevator vendors and that the Department working with the Texas Department of Licensing and Regulation (TDLR) may be a more practical solution to address elevator issues.

Commenter 2 suggest allowing owners to submit vendor service records, work orders, and other related documentation when an elevator is non-operable in lieu of submitting a form to the Department. Commenter 2 also advises that reporting a non-operable elevator does not address the primary cause of extended elevator outages because of the lack of control over the timing of elevators repairs and that delayed responses, service backlogs, and extended repair timelines are common within the industry.

Commenter 3 advises that adding more reporting requirements will not result in a faster resolution(s) or resident safety and that staff time should be focused on assisting residents and vendor management instead. Commenter 3 also suggests the alternative is to allow the submission of vendor service logs and other documentation when an elevator is non-operational. Commenter 3 offers the suggestion that TDHCA should work

with TDLR and increase penalties on elevator vendors and force them to perform or risk losing their license.

Commenter 7 strongly opposes and seeks to withdraw the provision that requires owners to report non-operational elevators to the Department within 24 hours using a specified form. It imposes an administrative burden on owners and managers, and it does not address the actual causes of prolonged elevator outages including accelerating vendor performance. According to Commenter 7, the primary reason elevators remain out of service for extended periods is not owner inaction, it is systemic delays by licensed elevator vendors. Owners and managers have no control over vendor response times which are routinely slowed by backlogs, scheduling issues, part shortages, supply chain disruptions and labor shortages in the elevator service industry. Commenter 7 explains that multifamily operators already manage complex compliance obligations with Fair Housing Accessibility requirements, HUD inspections/certifications, local building codes and ordinances and daily resident accommodations during outages. This results in diverting staff time and resources away from resident support, vendor coordination, and actual repair facilitation. It also could result in increased operation costs, risks staff burnout, and exposes owners to penalties for circumstances beyond their control. Commenter 7 also states penalizing owners for vendor failures will discourage development, rehabilitation, or continued operation of properties with elevators. Commenter 7 suggests allowing for submission of vendor documentation, such as service logs, repair tickets, vendor correspondence, and records of parts ordered in lieu of a required form to be submitted within 24 hours. Commenter 7 also recommends the Department work with TDLR because they license and inspect elevator companies, making them the appropriate agency to enforce faster service. Commenter 7 proposes a more reasonable reporting time by extending the timeline to 48-72 hours, exempting short outages (e.g., under 48 hours) and only applying the reporting requirement on buildings serving vulnerable populations (seniors, disabled residents).

Commenter 9 suggests that requiring reporting within 24-hours is extreme and the Department should allow for at least 7 days for owners to attempt to cure, allowing time to call for service and order parts.

Commenter 10 does not support the requirement of mandating reporting for every instance, regardless of duration or impact. This would generate reporting volume that does not enhance resident protections or Department oversight. Also, Commenter 10 reports that elevator outages are operational maintenance matters that are addressed through preventative maintenance plans, existing repair protocols, vendor contracts and applicable local code requirements including compliance with TDLR. Commenter suggests a more tailored reporting requirement, such as when outages exceed a defined duration, would be more appropriate than a blanket 24-hours reporting mandate. Commenter 10 advises the Department to remove or revise the requirement to better align with operational realities.

Commenters 4 and 11 support the requirement for owners to report non-operational elevators within 24-hours. Commenters 4 and 11 state that non-operational elevators can create life or death situations for residents during disasters by preventing people from being able to evacuate a property. They also provide examples when vulnerable residents do not have access to an operational elevator and that requiring the reporting will help ensure residents have safe and accessible housing.

Commenters 5 and 6 also support the reporting requirement because it is critical that inoperable elevators are repaired in a timely manner.

STAFF RESPONSE: The Department appreciates all comments and suggestions regarding reporting non-operable elevators. The purpose of implementing this administrative requirement is to be aware of any non-operational elevator(s) and work with owners collaboratively to ensure timely repairs. The Department acknowledges that owners and properties may have to work with vendor schedules; however, the Department wants to ensure that nonoperational elevator repairs are initiated immediately. The Department has accepted Commenter 7's suggestion of allowing 72-hours for properties to report non-operational elevators. This also aligns with the timeframe that all life-threatening and severe deficiencies must be reported as corrected within 72 hours (three Department business days).

Rule Section §10.622(m)

COMMENT SUMMARY: Commenter 1 opposes requiring a mandatory 60-day written notice for any rent increases and believes requiring a refund or credit if the 60-day notice is missed creates unnecessary risk of noncompliance. Commenter 1 suggests allowing for a grace period or exception before requiring a refund or credit. Commenter 3 has similar comments as Commenter 1 and states that rent increases are dictated by external factors and owners are also juggling tight deadlines and compliance requirements. Commenter 10 also does not support the addition of the 60-day rent notice increase requirement because Department rules already require a 75-day notice when the increase exceeds $74. Commenter 9 seeks clarification on if this revision applies when a 90-day notice of a utility allowance change, which is already required to be posted, covers this requirement.

STAFF RESPONSE: Staff did not accept suggestions from Commenter 10 because this requirement only pertains to Developments subject to this provision of the new 2025 HOME final rule where there are floating Units and Units subject to this provision of the 2025 HOME final rule where there are fixed Units. The requirement to provide a 60-day notice of a rent increase is a federal requirement in the new 2025 HOME Final Rule. To clarify Commenter 9 questions, the 90-day notice of a utility allowance change, which is federally required to be posted does not cover this new requirement. No change to the rule is made in response to this comment.

Rule Section §10.622(o)

COMMENT SUMMARY: Commenters 1, 2, 3 and 9 seeks clarification of the rule that an owner may not refuse to accept rental payment made on time and in full. Commenter 1 asks that the term "full rent" be clarified in this context as this could be misinterpreted. Commenters 2 and 3 agree with Commenter 1 and further state since "full rent" is not clearly defined, it creates uncertainty as to whether it refers solely to base rent or includes all charges due under the lease agreement, such as required fees, utilities, or other lease authorized charges. Commenter 9 seeks further explanation; does this requirement include all delinquent balances or just the current month. Commenter 11 supports the addition that rent must be accepted when payment is made on time and in full. Commenter 11 also suggests including a new requirement to limit rent increases to lease signing or renewal for §10.622(k). The reason for their suggestion is they have heard from tenants, advocates etc. that households are struggling with mid-lease rent increases which are permitted under some De-

partment programs. Commenter 11 also states that legislation has been introduced in the last four legislative sessions proposing new language at Tex. Gov't Code §2306.673(a), that would prevent an owner from increasing the rent paid by a household during the duration of the lease agreement.

STAFF RESPONSE: Department staff appreciates the question seeking to define "full rent". The requirement to accept full rent is only applicable when full rent is paid by the due date of the lease contract and there are no other outstanding prior rent balances past due. Department staff has updated the rule to make it clear that this provision is only applicable if the household does not have any outstanding rent balances due. Department staff did not include Commenter 11's suggestion that rent may only be increased at leasing signing or renewal. The rule already accounts that rent may not be raised more than once in a 12-month period and properties have to provide a 75-day notice if rent is going to increase by $75 or more. The Department programs are already rent restricted under federal and state regulations, and it is not the Department's role to implement further rent restrictions outside the underwriting process. However, if new statutory language goes into effect during or after the next legislative session, the Department will adopt rules to adhere to any new applicable provision(s).

Rule Section §10.622(p)

COMMENT SUMMARY: Commenter 11 supports the addition that an owner who controls utilities may not stop service on utilities during the longer of the required period identified by the applicable federal program or as defined by state law.

STAFF RESPONSE: Staff appreciates Commenter 11's support.

Rule Section §10.625 Events of Noncompliance

COMMENT SUMMARY: Commenters 5, 6 and 11 recommend that the table in §10.625 be updated to include a new event of noncompliance that failure to report an inoperable elevator is a noncompliance event and suggest that the Department do further rule updates to the Administrative Penalties rule in §2.302.

STAFF RESPONSE: Staff appreciates the recommendation and has updated Figure §10.625 to include a new event of noncompliance for an owner failing to report an elevator outage to the Department within the required timeframe. The Administrative Penalties rule in §2.302 is also going to the April Board meeting to propose provisions for elevator noncompliance.

STATUTORY AUTHORITY. The adopted amendment to the rule is made pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted amendment affects no other code, article, or statute.

§10.601. Compliance Monitoring Objectives and Applicability.

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

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

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

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

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

(D) Applicable state laws and rules;

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

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

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

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

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

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

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

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

(2) The HOME Investment Partnerships Program (HOME), inclusive of HOME Match Units;

(3) The Tax Exempt Bond Program, inclusive of 501c3 bonds (Bond);

(4) The Texas Housing Trust Fund Program (HTF, SHTF, or THTF), inclusive of Preservation;

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

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

(7) The Neighborhood Stabilization Program (NSP);

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

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

(10) The National Housing Trust Fund (NHTF)

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

(12) Emergency Rental Assistance (ERA).

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

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

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

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

(g) A Development with one or more HOME, TCAP-RF or HOME Match Units is subject to the 2025 HOME Final rule if a Contract with the Department is executed by both Parties on or after April 30, 2026; a Development with HOME, HOME-ARP, TCAP-RF and HOME Match Units with a Contract or a LURA executed prior to April 30, 2026, that has executed the applicable amendment(s) to opt-in the entirety of rule (to the extent allowed under federal or state law determined by the Department's Legal Division) are also subject to the HOME Final Rule. A Development with one or more NSP Units with a Contract executed on or after April 30, 2026, may be subject to elements of the HOME Final rule as further described in the Department's Consolidated Plan Amendment, and as outlined in the Contract and the LURA. A Development with one or more NSP Units with a Contract executed prior to April 30, 2026, that also has one or more Units subject to the 2025 HOME Final Rule may be allowed to opt into elements of the HOME Final rule, as determined by the Department's Legal Division.

§10.607. Reporting Requirements.

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

(1) 9% Housing Tax Credit Developments - no later than the 10% Test;

(2) 4% Housing Tax Credit Developments - no later than Post Bond Closing Documentation Requirements;

(3) For all other rental Developments - no later than September 1st of the year following the award; or

(4) For all rental Developments that have received Department approval of Ownership transfer - no later than 10 days following the completion of Ownership transfer.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (e) of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2022. The first report is due April 30, 2024, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of four parts:

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

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

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

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

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

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

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

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

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

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

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

(k) For Developments subject to the 2025 HOME Final Rule, within five (5) Department business days of a change to the Development Owner or management company, the new Owner or management company shall issue a written notice to all households of such a change and contemporaneously update this information via the CMTS Attachment system.

§10.611. Determination, Documentation and Certification of Annual Income.

(a) For all rental programs administered by the Department, annual income shall be determined by the Development Owner consistent with the Section 8 Program administered by HUD, using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3, as amended from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing IRS Form 8823, the IRS guidance will be controlling. For the BOND program, documentation of income and assets shall be determined in accordance with the HUD Handbook 4350.3 or the IRS guidance for the §42 Housing Tax Credit program (if applicable). At the time of program designation as a low income household, Owners must certify and document household income. In general, all low income households must be certified prior to move in. Certification and documentation of household income is an Owner's responsibility, even if the Owner is using the services of a manager or management company to handle tenant intake and leasing. Accordingly, Owners should ensure that they hire competent and properly trained managers or management companies and that they exercise appropriate oversight of any managers or management companies.

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

(c) Department administered programs are permitted to utilize the Section 8 Verification of income process, available on the Department website, for the verification of household income at initial or subsequent annual certifications for households currently utilizing a tenant based Housing Choice Voucher or project-based Housing Choice Voucher issued under 24 CFR Part 983. This permission is removed if any entity that is in the Control of the operation of the Development or is in any way associated with the certifying Housing Authority. No other means tested verifications are allowable.

(d) A household's lowest designation, as recorded on the Income Certification, at the time of move in, cannot be increased unless the household was found to never have income qualified for the Unit, no longer income qualifies for the Unit, or program rules required the change. In addition, a household's low income status cannot be removed because of an increase in income at recertification unless the increase causes the Unit to go over income as defined in §10.615 of this subchapter (relating to Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments), IRC §42(g), or the HOME Final Rule.

(e) For all programs, for every certification that requires verification of income and assets, those verifications must be dated within 120 days of the certification effective date. The only exceptions are lifetime benefits (e.g. pension, annuities, Social Security).

§10.613. Lease Requirements.

(a) Eviction and/or termination of a lease. HTC, TCAP, and Exchange Developments must specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action. For nonpayment of rent, HTC, TCAP, Exchange, and NHTF Developments require a thirty (30) day written notice. If the CARES Act is modified to eliminate the 30-day notice requirement, HUD or Treasury requirements will supersede this 30-day notice requirement for nonpayment of rent.

(b) HOME, ERA, TCAP RF, NHTF, NSP, and HOME-ARP Developments are prohibited from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for Transitional Housing (if applicable), for households that were found to never have income qualified for the highest income designation under the program or for other good cause. It must be specifically stated in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253 and 24 CFR §93.303). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253 or 24 CFR §93.303, as applicable. To terminate or refuse to renew tenancy in HOME, TCAP RF, NSP, and HOME-ARP Developments, the Owner must serve written notice to the tenant specifying the grounds for the action at least 30 days before the termination of tenancy. For HOME-ARP, Owners may not terminate the tenancy or refuse to renew the lease of the Qualifying Household in any Unit that is supported by capitalized operating costs because of the household's inability to pay rent of more than 30 percent of the qualifying household's income toward rent during the longer of the federal affordability period or the time period identified in the Contract.

(c) In accordance with the Violence Against Women Act, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking against the documented victim of such actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as a serious or repeated violation of a lease or good cause for termination of tenancy of the victim(s). Additionally, it shall not be construed as a serious or repeated violation of a lease or action eligible for termination of tenancy if a person has opposed any act or practice made unlawful by the Violence Against Women Act 2022, or because that person testified, assisted, or participated in any matter covered by the Violence Against Women Act 2022.

(d) A Development must use a lease or lease addendum that requires households to report changes in student status; this does not apply for NHTF Units when NHTF Units are fixed and not layered with HTC or another program with a student rule, or when NHTF Units are floating but under the LURA cannot be layered with HTC or another program with a student rule.

(e) Owners of HTC, TCAP, Exchange Developments and Developments subject to the 2025 HOME Final Rule are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) For HOME, TCAP, TCAP RF, NHTF, 811 PRA, NSP, ERA and HOME-ARP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department

will monitor that all households at HOME, TCAP, TCAP RF, NHTF, NSP, ERA, and HOME-ARP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355, 24 CFR §93.361 and §570.487(c), and Section 1018 of Title X, as applicable). The addendum and disclosure are not required if all lead has been certified to have been cleared from the Development in accordance with 24 CFR §35.130, and the Owner has the required certification in its on-site records.

(g) An Owner may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the Unit or other affiliated individual as defined in the VAWA 2022 and as further described in 24 CFR §5.2003 or subsequent federal regulation, and also for HOME ARP QP households persons described under 22 U.S.C. 7102.

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

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

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

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

(l) A Development Owner shall post in a common area of the leasing office a copy and provide each household, during the application process and upon a subsequent change to the items described in paragraph (2) of this subsection, the brochure made available by the Department, A Tenant Rights and Resources Guide, which includes:

(1) Information about Fair Housing and tenant choice;

(2) Information regarding common amenities, Unit amenities, and services;

(3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure;

(4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received; and

(5) A Development Owner must state in the Tenant Rights and Resources Guide if part or all of the Development Site is located in the 100 year floodplain. Developments where all or part of the Development Site is located in a 100 year floodplain where the latest award from the Department is after 2019, under a Project-Based Voucher HAP Contract or 811 PRA Use Agreement with the Department, within any federal affordability period (including a HOME Match affordability period), that have a loan with the Department with an outstanding loan balance, or that has flood insurance as a contractual requirement or requirement in its LURA must maintain flood insurance, and provide evidence to the Department upon request.

(m) For Section 811 PRA Units, Owners must use the HUD Model lease, HUD form 92236-PRA.

(n) Except as identified in federal or state statute or regulation for Direct Loans, or as otherwise identified in this Chapter, the Department does not determine if an Owner has good cause or if a resident has violated the lease terms. Challenges to evictions or terminations of tenancy must be determined by a court of competent jurisdiction or an agreement of the parties (including an agreement made in arbitration), and the Department will rely on that determination.

(o) A Development subject to the 2025 HOME Final Rule must comply with all provisions outlined within this section and the following:

(1) Surety bonds, security deposit insurance, and instruments similar to surety bonds or security deposit insurance may not be used in lieu of or in addition to a security deposit for any Unit in a Development with floating Units or for fixed Units in the Designated Units. All security deposits must be fully refundable and may not be greater than two months' rent.

(2) A Designated Unit must use the HOME tenancy addendum published by HUD. If HUD does not publish a tenancy addendum, then the Department's version must be used.

(3) Leases for Designated Units:

(A) A copy of the lease template must be submitted to the Department prior to being implemented or upon any revision;

(B) The lease must provide more than one method to communicate directly with the Owner and the property management, including in person, by telephone, email, or through a web portal;

(C) For a Development with one or more floating Units, if the Development is not using the same lease template for all Units in the Development, the lease must provide the provisions that will go into effect upon the Unit becoming a Designated Unit; and

(D) The lease must provide the following Department contact information: mail: TDHCA P.O. Box 13941 Austin, Texas 78711 phone: (512) 475-3800 email:info@tdhca.texas.gov.

(4) All Notices to Vacate must be submitted to the Department no later than 14 days after the notice is issued (in the case of a 30-day notice). In cases where a shorter Notice to Vacate is issued due to imminent threats to other tenants, employees, or property, a copy of the notice must be provided to the Department upon issuance.

(p) For all Developments that have or had direct loan funds from the Department, surety bonds, security deposit insurance, and instruments similar to surety bonds or security deposit insurance may not be used in lieu of or in addition to a security deposit for any Unit in a Development with floating Units or for fixed Units in the Designated Units.

§10.614. Utility Allowances.

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

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms used in this section herein have the meanings assigned in Chapters 1, 2, 10, 11, 12, and 13 of this title.

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

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

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

(A) Rate(s). Any cost incurred for the actual unit of measure for the utility (e.g., base cost per kilowatt hour for electricity, TDU delivery charges, rate per gallon of water, etc.);

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

(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accounts and can be found http://comptroller.texas.gov/ (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain documentation directly from the Utility Provider.

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

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

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

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

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

(C) Tenants receiving a tenant-based Housing Choice Voucher or residing in a Housing Tax Credit Development may not be charged a service fee for submetered utilities. For MFDL Developments where tenants are being charged a service fee for submetered utilities, the fee must either be included in the Utility Allowance or be included in the gross rent calculation as a mandatory fee.

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

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

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

(ii) Submetered Utilities; and

(iii) Renewable Source Utilities.

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

(8) Utility Provider. The company that provides residential utility service (e.g., electric, gas, water, wastewater, and/or trash) to the buildings. If the Utility Provider offers more than one rate plan, the plan selected must be available to all households in the building.

(c) Methods. The following options are available to establish a Utility Allowance for all programs except most Developments funded with MFDL funds, which are addressed in subsection (d) of this section. A Development with HOME-ARP Units or Units subject to the 2025 HOME Final Rule, and that does not have Units subject to the 2013 HOME Rule, may use methods in this subsection or subsection (d) of this section, but cannot combine two methods in one building.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) In the event that the zip code for the Development is not listed in "Location" tab of the workbook, the Department will default to the PHA code from the PHA that is closest in distance to the Development using online mapping tolls (e.g. Google Maps). If neither the zip code nor the PHA code is listed, a zip code that borders the Development's zip code will be used The Department will obtain the PHA codes from https://www.hud.gov/sites/dfiles/PIH/documents/PHA_Contact_Report_TX.pdf (or successor Uniform Resource Locator (URL)).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review. Energy Star certifications will require the certificates for each Unit at the time of the initial Utility Allowance review and a letter from a properly licensed engineer annually thereafter. The engineer letter will be accepted for a period of five (5) years and must be updated thereafter.

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

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

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

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

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) For Developments with fixed MFDL Units, only one utility allowance may be used in buildings with MFDL units. For Developments with floating MFDL Units, only one utility allowance may be used for the entire Development.

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

(3) Other Buildings. The Utility Allowance may be initiated by the Owner using the methodologies described in subsection (c)(3)(B), (C), (D), or (E) of this section related to Methods. Buildings for which the only source of MFDL funding is HOME-ARP and which contain no Units subject to the 2013 HOME Rule may calculate the Utility Allowance using the methodology described in subsection (c)(3)(A) of this section. A Development that is subject to the 2025 HOME Final Rule may also use the methodology described in subsection (c)(3)(A) of this section, if the Development does not also contain Units subject to the 2013 HOME rule. The methodology must be annually reviewed and approved by the Department.

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

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

(B) Monitor Review Questionnaires submitted with prior monitoring reviews; or

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

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

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

(ii) For deregulated utilities:

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

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

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

(E) The Department will notify the Owner contact in CMTS of the new allowance and, if requested, provide the backup for how the allowance was calculated. The owner will be provided a five day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the residents will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges

used in calculating the allowance will not be changed. During this five day period, the owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

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

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

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

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

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

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

(3) Effective dates. If the Owner uses the methodology as described in subsection (c)(3)(A) of this section related to Methods, no posting is required, and any changes to the allowance can be implemented immediately, but must be implemented for rent due at least 90 days after the change. For methodologies as described in subsection (c)(3)(B), (C), (D) and (E) of this section related to Methods, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the 90 day period in which the Owner intends to implement the Utility Allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue. Figure: 10 TAC §10.614(f)(3) (No change.)

(g) Requirements for Annual Review.

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

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

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

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

(h) For Owners participating in the Department's Section 811 Project Rental Assistance (PRA) Program, the Department's 811 division staff will approve the Utility Allowance for all 811 Units. On an annual basis, the Owner is responsible for submitting a Utility Allowance to the Department's 811 division for review. Once approved, the 811 division will provide the Owner with a property-specific rent

schedule containing the approved Utility Allowance. The allowance listed on the rent schedule only applies to 811 PRA Units, not the entire building, and is the only allowance approved for use on 811 PRA Units. Failure to obtain an updated rent schedule for changes in utility allowances and gross rents will result in noncompliance and will require the Department to monitor tenant rents using the current approved rent schedule.

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

(j) The Owner shall maintain and make available for inspection by the resident all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the resident at the convenience of both the Owner and resident.

(k) Utility Allowances for Applications.

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

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

(3) If the application includes MFDL funds from the Department, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(B), (C), (D) or (E) of this section related to Methods. A Development with HOME-ARP Units that is subject to the 2025 HOME Final Rule may use subsection (c)(3)(A) of this section, if the Development does not also contain one or more Units subject to the 2013 HOME Final Rule. Applicants must submit their utility allowance to the Compliance Division prior to full application submission. In the event that the application has an MFDL from the Department, and receives federal funds from a unit of local government, the Department will require the use of the allowance approved by the Department.

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

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

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

(B) Example 614(7): An application for a 9% HTC is due March 1, 2022. The applicant would like Department approval to use an alternative method by February 15, 2022. The request must be submitted to the Compliance Division no later than January 25, 2022, three weeks before February 15, 2022.

(C) Example 614(8): An Applicant intends to submit an application for a 4% HTC with Tax Exempt Bonds on August 11, 2022, and would like to use an alternative method. Because approval is needed prior to application submission, the request can be submitted no earlier than May 13, 2022, (90 days prior to August 11, 2022) and no later than July 21, 2022, (21 days prior to August 11, 2022).

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

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

(A) Be submitted directly to UA-Application@tdhca.texas.gov. Requests not submitted to this email address will not be recognized.

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

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

(m) Department review and approval of Renewable Sources (e.g. solar):

(1) Methods outlined in subsection (c)(3)(A), (B), (C), (D) and (E) of this section are allowable if the Utility Provider or PHA publishes a rate plan or schedule specific to Renewable Sources. The method outlined in subsection (c)(3)(E) of this section is allowable only after occupancy is established as outlined in subsection (c)(3)(E) of this section;

(2) Only buildings benefitting from Renewable Sources can use a Renewable Source utility allowance;

(3) Tenants (not Owners) must benefit from the Renewable Source in a manner that is not a discount or credit. To evidence the benefit, 20% of current tenant bills must be submitted with the request; and

(4) An Owner must submit both the Renewable Source allowance and the non-Renewable Source allowance for approval regardless of methodology or current occupancy. If the Renewable Source is damaged or inoperable for more than 30 days, the non-Renewable Source allowance must be implemented. At the time of the first review or the first annual utility allowance review, whichever is first, the Owner must be able to demonstrate with tenant bills that the tenants are

benefitting from the Renewable Source; otherwise the non-Renewable allowance must be used.

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

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

§10.621. Property Condition Standards.

(a) All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes. Timelines for correcting deficiencies under the NSPIRE standards are as follows:

(1) Life-Threatening and Severe deficiencies must be corrected within 24 hours.

(2) Moderate deficiencies must be corrected within 30 days.

(3) Low deficiencies must be corrected within 60 days.

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

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

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

(e) Selection of Units for Inspection.

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

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

(f) The Department will consider a request for review of a NSPIRE score using a process similar to the process established by the U. S. Department of Housing and Urban Development Real Estate Assessment Center. The request must be submitted in writing within 45 calendar days of receiving the initial NSPIRE inspection report and score. The request must be accompanied by evidence that supports the claim, which if corrected will result in a significant improvement in the overall score of the property. Upon receipt of this request from the Owner the Department will review the inspection and evidence. If the Department's review determines that an objectively verifiable and material error (or errors) or adverse condition(s) beyond the Owner's control has been documented and that it is likely to result in a significant improvement in the Development's overall score, the Department will take one or a combination of the following actions:

(1) Undertake a new inspection;

(2) Correct the original inspection; or

(3) Issue a new physical condition score.

(g) The responsibility rests with the Owner to demonstrate that an objectively verifiable and material error (or errors) or adverse conditions occurred in Department's inspection through submission of materials, which if corrected will result in a significant improvement in the Development's overall score. To support its request for a technical review of the physical inspection results, the Owner may submit photographic evidence, written material from an objective source with subject matter expertise that pertains to the item being reviewed such as a local fire marshal, building code official, registered architect, or professional engineer, or other similar third party-documentation.

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

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

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

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

(4) Local Conditions and Exceptions--Circumstances include inconsistencies between local code requirements and the NSPIRE inspection protocol, such as conditions permitted by local variance or license (e.g., child guards allowed on sleeping room windows by local building codes) or preexisting physical features that do not conform to or are inconsistent with the Department's physical condition protocol.

(5) Ownership Issues--Items that were captured and scored during the inspection that are not owned and not the responsibility of the Development. Examples include sidewalks, roads, fences, retaining walls, and mailboxes owned and maintained by adjoining properties or the city/county/state and resident-owned appliances that are not maintained by the Owner. However, if the Owner has an agreement with the city/county/state for the responsibility of maintenance on accessible routes including sidewalks, then the Owner will be responsible for any repairs.

(6) Modernization Work In Progress--Developments undergoing extensive modernization work in progress, underway at the time of the physical inspection, may qualify for an adjustment. All elements of the Unit that are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject

to the Department's physical inspection protocol without adjustment. Any request for a technical review process for modernization work in progress must include proof the work was contracted before any notice of inspection was issued by the Department.

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

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

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

(j) All Life-Threatening and Severe deficiencies must be corrected within 24 hours. Project Owner's Certification That All Life Threatening and Severe Deficiencies Have Been Corrected must be completed and uploaded to CMTS within 72 hours (three Department business days).

(k) An Owner must report to the Department any non-operable elevators within 72 hours (three Department business days) using the Department's form, which is posted on the website.

§10.622. Special Rules Regarding Rents and Rent Limit Violations.

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

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC, TCAP, and Exchange programs. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household's account. In the absence of a household's election, a full refund check must be presented to the household within thirty days.

(c) Rent Violations of the maximum allowable limit due to application fees. Under the HTC, TCAP, and Exchange programs, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to $5.50 per Unit for their other out-of-pocket costs for processing an application without providing documentation. The $5.50 will be adjusted annually based on the Cost of Living increased published by the Social Security Administration. Example 622(1): A Development's out-of-pocket cost for processing an application is $17.00 per adult. The property may charge $22.50 for the first adult and $17.00 for each additional adult.

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

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

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

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

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

(f) Trust Account to be established. If the Owner is required to refund rent under subsection (b), (d) or (e) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the household. If the violation effects multiple households, the Owner may set up a single account with all of the unclaimed funds. The account must remain open for the shorter of a four year period, until all funds are claimed, or the expiration of the Extended Use Agreement. If funds are not claimed after the required period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes. All unclaimed property remissions to the Comptroller must be broken out by individuals and particular amounts.

(g) Rent Adjustments for HOME, TCAP RF, and HOME-ARP Units:

(1) 100% HOME/TCAP-RF/HOME-ARP assisted Developments and that contain no HTC Units. If a household's income exceeds 80% at recertification, the Owner must charge a gross rent equal to 30% of the household's adjusted income;

(2) HOME/TCAP-RF/HOME-ARP Units in Developments with any Market Rate Units and where the Unit is not layered with HTC. If a household's income exceeds 80% at recertification, the Owner must charge a gross rent equal to the least of 30% of the household's adjusted income, the comparable Market rent, or the rent being charged for the same Unit Type on a Market Rate Unit; and

(3) HOME/TCAP-RF/HOME-ARP Units layered with HTC Units. If a household's income exceeds 80% at recertification, the Owner must charge a gross rent equal to or less than the applicable HTC limit.

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

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

(2) Units restricted for occupancy by Qualifying Populations with incomes greater than 50% of median income but at or below 80% of the median income must pay rent not greater than the rent specified in 24 CFR §92.252(a), high HOME rent.

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

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

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

(k) Owners are not permitted to increase the household portion of rent more than once during a 12 month period, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a federal housing program that requires such changes or the household transfers to a Unit with additional Bedrooms. If it is determined that the Development increases rent more than once in a 12-month period, the Department will require the Owner to refund or credit the affected household. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household.

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

(m) A Development subject to the 2025 HOME Final Rule that contains one or more floating Units must provide all households a 60-day written notice before implementing any rent increase. A Development with Units subject to the 2025 HOME Final Rule with one or more fixed Units must provide a 60-day written notice to the Designated Units. If an Owner increases the household's rent without providing a 60-day notice, any increases must be refunded or credited to the affected household(s). The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In absence of a tenant election, a full refund check must be presented to the household.

(n) An Owner must provide an option to pay rent in a manner that does not involve additional out of pocket costs to the household.

(o) An Owner may not refuse to accept rental payment made on time and in full if the household does not have any outstanding previous rent balances due.

(p) An Owner that controls utilities, may not stop service on utilities during the longer of the required period identified by the applicable federal program, or as directed by state law.

§10.625. Events of Noncompliance.

Figure: 10 TAC §10.625 lists events for which a multifamily rental Development may be found to be in noncompliance for compliance monitoring purposes. This list is not an exclusive list of events and issues for which an Owner may be subject to an administrative penalty, debarment or other enforcement action. The first column of the chart identifies the noncompliance event. The second column indicates to which program(s) the noncompliance event applies. The last column indicates whether the issue is reportable on IRS Form 8823 for HTC Developments.

Figure: 10 TAC §10.625

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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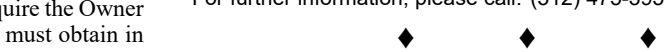

10 TAC §10.612

The Texas Department of Housing and Community Affairs (the Department) adopts the amendment of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F Compliance Monitoring, §10.612 Tenant File Requirements, with changes to the proposed text as published in the January 23, 2026 issue of the *Texas Register* (51 TexReg 353). The rule will be republished.

The purpose of the amendment is to update the rule to provide clarity with how adherence to Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) will be implemented for multifamily HOME, HOME-ARP, and National Housing Trust Fund properties in the Department's portfolio as required by the federal direction provided in the 2025 grant agreements issued by the United States Department of Housing and Urban Development (HUD). PRWORA provides that an alien who is not a qualified alien is not eligible for any federal public benefit.

Tex. Gov't Code §2001.0045(b) does not apply to the amendment because it is subject to the exception under §2001.0045(c)(4) which excepts amendments that are necessary to receive a source of federal funds or to comply with federal law.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

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

1. The amendment does not create or eliminate a government program but relates to changes to an existing activity: the implementation and applicability of Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) in the Department's HOME, HOME-ARP and NHTF properties.

2. The amendment will require additional work that creates one or more new employee positions. One position will be used to coordinate all issues surrounding PRWORA across multiple programs at the Department, including creating and providing training, developing forms and notices in collaboration with legal staff, providing vendor support if needed, updating and developing the documentation charts and checklists to be used by properties, assisting Compliance staff in developing monitoring tools, and setting up properties with access to the SAVE system. Additional staffing needs may vary depending on what portion of tenants requiring verification are submitted to the Department for verification and what portion are performed by properties. Per the rule, properties are required to perform the verifications themselves unless not permitted to do so (for instance if they have been federally debarred they may be precluded from accessing the SAVE system). Under that premise, it is anticipated that the Department will not have significant verifications to perform. In either case the costs of all new positions are federal eligibly reimbursable expenses under the applicable program grants (because PRWORA is now applicable to HOME, HOME-ARP, NHTF, ESG and CSBG, in addition to previous programs which were already subject to PRWORA, administrative funds may be utilized from those programs to support the staffing needs). The amendment does not generate a reduction in work that would eliminate any employee positions.

3. The amendment does not require additional future legislative appropriations; the added position(s) are absorbed with existing appropriated administrative funds.

4. The amendment will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The amendment is creating a new regulation because it is necessary to receive a source of federal funds or to comply with federal law.

6. The amendment does expand an existing regulation to provide additional requirements, however the expanded regulations are required to comply with federal law.

7. The amendment does increase the number of individuals subject to the rule's applicability. Through this rule the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) will be implemented for multifamily HOME, HOME-ARP Rental and National Housing Trust Fund properties in the Department's rental portfolio as required by the federal direction provided in the 2025 grant agreements issued by the Unites States Department of Housing and Urban Development (HUD). PRWORA provides that an alien who is not a qualified alien is not eligible for any federal public benefit. Therefore, individuals not previously subject to this verification will now require verification of US Citizen, US National, or Qualified Alien status.

8. Effect on the state's economy. Public comment received on the rule suggests that the rule action creates measurable operational costs that can affect property performance at scale. They believe that even modest increases in unit vacancies or turnover across the affected portfolio (approximately 391 properties) can reduce rental revenue and increase operating costs, raising the risk of financial distress at impacted developments. The comments suggest that those impacts can flow through to local economies through reduced local spending, tighter rental supply, and a potential decrease in local property tax collections. Additionally, commenters suggest that requiring verification of eligible status for households will force mixed status families to choose between staying together or being evicted and when families lose access to housing the adult's ability to maintain stable employment is compromised as well as the children's ability to stay in school. Commenters suggest both of these issues create immediate and long-term economic impacts on the state.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the amendment and received comment that the amendment will create an economic effect on small or micro-businesses or rural communities. Comment suggests that the rule requirements are not reduced for small operators or rural properties and that in fact, they may be faced with more household verifications because they tend to more frequently utilize the programs that are applicable. Small operators and rural properties often have limited onsite capacity, increasing the proportional burden and the risk of findings. When verifications escalate to nonrenewal and a household will not vacate, properties can incur foreseeable enforcement costs for court and attorney fees, staff time and the costs of turning over a unit.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amendment as to its possible effects on local economies and has received public comment

that there may be an economic effect on local employment. As noted above, comment suggests that requiring verification of eligible status will force mixed status families to choose between staying together or being evicted and if families lose access to housing, the adult's ability to maintain stable employment is compromised. Further, commenters noted that for tenants having to handle document retrieval, notices, follow-up, and dispute resolution, it can require time off work or missed wages, particularly for hourly workers and households with limited transportation or limited access to document-issuing agencies. When verification delays or disputes prevent a household from leasing a unit or contribute to housing loss, households may be forced to relocate farther from work or leave the city entirely, disrupting commute time, childcare arrangements, and schedule reliability. That potentially increases missed shifts and turnover risk for local employers.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the changed sections would be ensuring compliance with federal guidance and ensuring that federal public benefits are only being received by qualified aliens, US Nationals or US citizens.

Comment was also received that denotes public costs. They suggest that this rule only applies to HOME, HOME-ARP Rental, and NHTF developments in TDHCA's monitored portfolio, while comparable units administered by local jurisdictions using the same federal programs may not be subject to the same state-level procedures. That unevenness can encourage program shopping, concentrating administrative burden and compliance risk in TDHCA's portfolio and increasing lease-up and vacancy friction at impacted properties. Because of the new requirements there also may be reduced owner participation in the programs. If TDHCA-administered resources carry additional tenant-facing requirements beyond what similarly situated programs require elsewhere, some owners may be less willing to pursue TDHCA HOME, HOME-ARP Rental, or NHTF financing, which would directly reduce production and preservation capacity.

One of the costs commenters noted was the impacts expected on mixed-status households and the resulting harm to eligible members. According to commenters, HUD's Regulatory Impact Analysis for its proposed Section 214 rule reports that within mixed families, 70% of members are eligible and 30% are ineligible, and that among eligible members, 65% are children. Even when the policy objective is compliance, verification failures, delays, or nonresponses can reduce assistance for otherwise eligible members. Because most eligible members in mixed-status households are children, these disruptions and reductions can fall disproportionately on children.

As a further cost, a household that does not currently have access to documents that confirm their legal status may have to take steps to obtain copies of birth certificates, or other applicable documents and pay associated fees for those items.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has determined that for each year of the first five years the amendment is in effect, enforcing or administering the amendment may have some costs to the Department, to the extent that the Department will be adding one or more staff members as described more fully earlier in this preamble.

One of the commenters applied HUD's Paperwork Reduction Act benchmark to this rule and concluded that there would be significantly increased property and portfolio costs. They noted that the property costs will include routine verification plus follow-up workload for delayed or disputed cases and documentation requirements. If this rule is applied not only to units assisted with the applicable federal program funds, but all units in those properties, those costs will be more significant. There may also be downstream costs when disputes escalate, including vacancy loss and legal and court-related costs.

SUMMARY OF PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requested comments on the rule and also requested information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period was held January 30 to March 3, 2026, to receive input on the proposed action. Comment was received from 20 commenters: 1) Accolade Property Management; 2) American Civil Liberties Union - Texas; 3) Roger Arriaga (hearing commenter); 4) Representative John Bryant; 5) Children's Defense Fund- Texas; 6) City of El Paso, Department of Human and Community Development; 7) Every Texan (hearing commenter); 8) Foundation Communities and New Hope Housing; 9) Brian Gamble (hearing commenter); 10) Representative Barbara Gervin-Hawkins; 11) Representative Mary Gonzalez; 12) Laredo Immigrant Alliance; 13) Whitney Parra (hearing commenter); 14) Kathleen Petty (hearing commenter); 15) City of Pharr, Grants Management and Community Development; 16) Texas Affiliation of Affordable Housing Providers and Texas Apartment Association; 17) Texas House Democratic Caucus; 18) Texas Housers; 19) US Hispanic Contractor's Association; and 20) Maria Watkins (hearing commenter).

The comments from the Texas House Democratic Caucus (Commenter 17), reflect the input from the following 29 Texas House Representative Members: Gene Wu; Donna Howard; Ramón Romero, Jr.; Joe Moody; Suleman Lalani; Jessica González; Mihaela Plesa; Ron Reynolds; Senfronia Thompson; Ray Lopez; Lulu Flores; Erin Zwiener; Josey Garcia; Christina Morales; Vikki Goodwin; Jolanda Jones; Armando Martinez; Armando Walle; Jon Rosenthal; Diego Bernal; John Bucy III; Toni Rose; Alma Allen; Rafael Anchía; Ana Hernandez; Chris Turner; Cassandra Garcia Hernandez; Salman Bhojani; and Linda Garcia.

In the following summary of comment, the numbers denote the commenters who made comments on that topic. For instance, if a comment is followed by five numbers, the five noted commenters that match those numbers are the entities or individuals who made those comments.

Comments on Preamble and Required Rule Analysis (5)(13)(16)(18)

Government Growth Impact Statement: Commenter 16 suggests that TDHCA should reconcile staffing assumptions - one preamble provided indicated that there were no staffing needs, while the other preamble anticipated 1 to 2 positions. They requested that the preamble specify whether TDHCA will absorb the work or add staffing and provide detail on the federal administrative funds that will support the position. They also requested that TDHCA address training, standardized forms/notices, secure submission methods, vendor support and monitoring tools. Commenter 13 also brought up this issue in the public hearing.

Adverse Economic Impact on Small Businesses and Rural Communities: Commenter 16 suggests that the Department's 'no economic effect' determination should be reconsidered. The rule requirements do not scale down for small operators or rural properties with limited onsite capacity, increasing the proportional burden and the risk of findings. When verifications escalate to nonrenewal and a household will not vacate, properties can incur foreseeable enforcement costs for court and attorney fees, staff time and the costs of turning over a unit.

Effect on State's Economy, Local Employment Impact Statement: Commenter 16 feels TDHCA's statements concluding no effect on the state's economy and no local employment impact should be amended. The proposed requirements create measurable operational costs that can affect property performance at scale. Even modest increases in vacancies or turnover across the affected portfolio can reduce rental revenue and increase operating costs, raising the risk of financial distress at impacted developments. Those impacts can flow through to local economies through reduced local spending, tighter rental supply, and a potential decrease in local property tax collections.

Commenter 5 also disagrees with the preamble of the rule that said the rule actions would not affect the state's economy. They suggest that the rules will force mixed status families to choose between staying together or being evicted and it will make children that are US citizens at risk of homelessness. When families lose access to housing the adult's ability to maintain stable employment is compromised as well as the children's ability to stay in school; both of these issues create immediate and long-term economic impacts on the state.

Commenter 16 suggests TDHCA should also acknowledge foreseeable local employment impacts. For tenants having to handle document retrieval, notices, follow-up, and dispute resolution, it can require time off work or missed wages, particularly for hourly workers and households with limited transportation or limited access to document-issuing agencies. More significantly, when verification delays or disputes prevent a household from leasing a unit or contribute to housing loss, households may be forced to relocate farther from work or leave the city entirely, disrupting commute time, childcare arrangements, and schedule reliability. That potentially increases missed shifts and turnover risk for local employers and should be reflected in the local employment impact discussion. Commenter 18 also states that contrary to the Department's assertion, there will clearly be economic costs for households to comply with these sections.

Public Benefit/Cost: Commenter 16 indicates that this rule only applies to HOME, HOME-ARP Rental, and NHTF developments in TDHCA's monitored portfolio, while comparable units administered by local jurisdictions using the same federal programs may not be subject to the same state-level procedures. That unevenness can encourage program shopping, concentrating administrative burden and compliance risk in TDHCA's portfolio and increasing lease-up and vacancy friction at impacted properties. The fiscal note should acknowledge the risk of reduced owner participation. If TDHCA-administered resources carry additional tenant-facing requirements beyond what similarly situated programs require elsewhere, some owners may be less willing to pursue TDHCA HOME, HOME-ARP Rental, or NHTF financing, which would directly reduce production and preservation capacity.

Commenter 16 also asks that TDHCA acknowledge impacts on mixed-status households and the resulting harm to eligible members. HUD's Regulatory Impact Analysis for its proposed Section 214 rule reports that within mixed families, 70 percent of members are eligible and 30 percent are ineligible, and that among eligible members, 65 percent are children. Even when the policy objective is compliance, verification failures, delays, or nonresponses can reduce assistance for otherwise eligible members. Because most eligible members in mixed-status households are children, these disruptions and reductions can fall disproportionately on children. The public benefit/cost note should reflect this as a public cost.

Fiscal Note: The fiscal note should address both Department implementation costs and regulated-entity compliance costs. Department costs include training, standardized forms and notices, secure submission methods, escalation support, and monitoring protocols. Regulated-entity costs include routine verification plus follow-up workload for delayed or disputed cases and documentation requirements, with significant sensitivity to scope if practices spill beyond the assisted-unit universe. TDHCA should also acknowledge foreseeable downstream costs when disputes escalate, including vacancy loss and legal and court-related costs.

Commenter 16 has applied HUD's Paperwork Reduction Act benchmark to support how this rule has costs. As part of that comment they estimate significantly increased property and portfolio costs. They specifically request that TDHCA should acknowledge this cost in its fiscal note.

Staff Response: Staff has revised the rule preambles in response to the feedback provided.

§10.612 and §10.628 - Overall Opposition and Request to Withdraw or Delay the Rules (2)(4)(5)(6)(7)(10)(11) (12)(17)(18)(19)

Multiple commenters suggest that because more guidance is expected from HUD, it is premature to proceed with the rules; particularly, that since HUD has indicated that it will release more guidance so the Department should wait until that occurs (5)(12)(18). Commenter 12 believes the Department is overcomplying by preceding HUD guidance. Commenter 5 and 18 suggests that the rulemaking should be paused until further HUD guidance is available. They suggest that the Department acting prior to additional federal guidance may create legal liability for the state.

Commenter 2 believes the rule as written raises preemption concerns and would result in the wrongful denial of eligible tenants. They also raised concerns that landlords and public housing authorities will have to collect information that could potentially expose individuals to enforcement and the ability for immigrant communities to access safe and affordable housing.

Commenter 2 asserts that the rule fails to adhere to Section 401(a) of PRWORA and may cause eligible families to be excluded. The guidance from TDHCA provides no information on the verification process nor indicates any acceptable documentation from tenants who are qualified aliens, while only accepting proof of US citizenship as valid documentation. If the current documentation list is used, individuals may have their applications erroneously denied or be wrongfully evicted.

Commenter 7 also noted that one in four children live in mixed status families and they will be affected by this policy and the rule rollout is premature. They note that according to a 2024 Texas kids count, Hispanic or Latino children in Texas are 36% more likely to live in households facing high cost of living burdens.

Commenters 4, 6, 10 , 11, 17 and 18 were strongly opposed to the rules and urged TDHCA to withdraw them. The rule will have

a chilling effect on mixed-status households which will discourage entire households from seeking the housing stability they are legally entitled to receive. The rule will cause fear and confusion statewide. U.S. citizen children in mixed status households will be left without stable homes, violence survivors will be forced to choose between safety and status, elderly immigrants will be severed from their safety net, and working families will be pushed into greater housing insecurity.

Commenters 4, 7 and 18 believe that the rules will erode trust between immigrant communities and public institutions. Commenters 4 and 10 also noted that the rule contradicts the Department's fundamental mission. Commenter 6 felt that the rule will undermine efforts to prevent homelessness and maintain housing stability.

Commenter 11 indicates that eligibility for federal subsidized housing has never been restricted to US citizens and embedding immigration enforcement into state housing rules undermines legislative intent and misdirects limited state resources. Commenter 11 believes through this rule the Department jeopardizes an estimated 9,000 to 28,000 units statewide.

Commenters 4, 10 and 17 urged that the Department discuss these concerns with affected communities and advocates prior to taking further rule actions.

Commenter 19 feels the rule changes cause a cascading effect on Texas Communities, workplaces, schools, healthcare and individual security and safety. There will be a direct impact on lawful DACA recipients. They also feel that the rule changes will cause economic destabilization as DACA workers facing loss of housing will cripple industries relying on lawful DACA workers. There will be widespread evictions and forced displacement. These restrictions will affect mixed-status households most significantly, and ultimately affect landlords when there are losses to housing and workforce.

Commenters 5 and 8 suggest that TDHCA should clarify that nonprofit charitable housing providers are exempt from PRWORA verification requirements, but they also acknowledge that the Notice creates confusion because it does not relieve states from ensuring all programs are compliant with PRWORA. They feel that this ambiguity is a reason that the rulemaking should be delayed until further guidance is released. They think that it will be very difficult for the Department to provide clarity without HUD having provided that clarity first.

Staff Response: Per the HUD notice of November 26, 2025, and the 2025 federal funding agreements states are not relieved from the requirements to ensure that all relevant programs are in compliance with PRWORA. HUD places the burden on TDHCA to ensure compliance with PRWORA, even before "new guidelines" are issued by HUD. Therefore, staff does not recommend withdrawing or deferring the rule. TDHCA does not believe it is 'overcomplying' but rather fully complying. Should additional federal guidance be released that provides any greater specificity on how PRWORA should be applied to the programs, TDHCA will certainly adhere to that guidance. The TDHCA rule changes are specific enough to reflect adherence to the requirements of the federal funding agreements and to properly put program participants on notice, but still provide sufficient leeway for further guidance to be issued to our program participants should federal guidance be forthcoming. No change is recommended to the rule in response to this topic of comment.

As it relates to the comment that eligible families may be excluded because the guidance from the Department relating to allowable documentation does not indicate acceptable documentation from tenants who are qualified aliens, but only US citizens, the document includes US Citizenship and US national Department is consistently looking to improve and update the guidance. Commenter 2 is encouraged to contact Gavin Reid (gavin.reid@tdhca.texas.gov) at the Department to provide specific suggested additions or revisions to the guidance.

The Department does not interpret enforcement of federal requirements as contradictory to its mission. Safeguarding the state's ability to access HOME, NHTF, and HOME-ARP funds through compliance with federal requirements is essential to keeping these funds available to qualified Texans.

As it relates to the impact on households, effects are associated with PRWORA, not necessarily the Department's applicability of PRWORA. By pushing the effective date of the rule to August 1, 2026, more notice is provided for households.

As it relates to the comments that the Department should discuss issues of the rule and its implementation with affected communities and advocates, TDHCA hosted a public hearing and a public comment period which was announced through the Department's email distribution groups. The Department will continue to seek input as documentation guidance is developed.

As it relates to the suggested exemption for nonprofit organizations, because the Department is still accountable for ensuring the PRWORA requirements as satisfied, the Department will clarify in the rule that in the case of properties in which the ownership entity is a nonprofit organization the property will have the option of either performing verifications themselves under §10.628(f)(2)(A), or gathering the required documentation and having the Department perform the verification under §10.628(f)(2)(B).

Concerns with the SAVE System (2)(5)(18)

Commenters 2, 5 and 18 indicate that the rule mandates the use of SAVE; however they believe the SAVE system is faulty, raises privacy and security concerns, increases risk of datamining, and has errors that render it an unreliable source for legal status. According to one source it has an error rate of at least 14%. Commenter 18 also raises concerns that SAVE is inaccurate, constantly changing and generates unclear reports. They are concerned also that federal employees and federal immigration enforcement officials may use SAVE to track individuals. The SAVE system's reliance on social security data does not provide definitive status information and is prone to inaccuracies. Commenter 18 is also concerned that SAVE error rates will result in eligible Texans losing access to housing.

Commenters 5 and 18 believes that the use of SAVE where additional verification is needed may cause excessive wait times up to 3 weeks for a household awaiting housing assistance, adding to precarious housing situations or adding additional housing costs.

Staff Response: When verification is unable to be satisfied using the documents provided by a household, the only system available to the Department for verification, and therefore available to properties, is the SAVE system. No changes to the rule are made in response to these comments.

§10.612 and §10.628 - Administrative and Cost Burden (4)(6)(7)(11)(12)(15)(17)(18)

Commenters noted two primary categories of costs and burden-those on property owners and providers, and those on households.

Commenters 4, 7 and 18 noted that the rules will create administrative burdens and costs for property owners and providers, including costs associated with reduced occupancy. Commenter 6 also thinks the rule requirements will increase staffing, training and monitoring responsibilities that will divert resources away from direct service delivery. Commenters 11, 12, 15 and 17 noted that the verification process will impose steep burdens on local governments and program administrators.

Commenter 18 feels that the requirements are an unfunded mandate that will significantly impact developments across the state. There will be unavoidable delays and costs related to document collection, internal review, errors and appeals. Having to check for legal status will be an entirely new process for most properties. There will also be costs associated with creating new processes, staff training, ensuring system compatibility. These steps will be particularly difficult for smaller owners many of which are located in rural areas.

Commenter 18 also thought that costs would be significant because properties would not have access to SAVE through the existing Memorandum of Agreement between TDHCA and Department of Homeland Security. If they can't access SAVE themselves, properties would have to submit their household verifications to TDHCA for processing. The system and method they would need to use would likely be substantial and fall more on small or micro-businesses and rural communities.

Commenter 12 also notes the administrative burden on Texans who will have to sacrifice work hours to obtain these benefits. Commenters 4, 7 and 18 note that the rule will create delays and increase costs for tenants. Commenters 7 and 18 also note the delays and costs for tenants as they seek to procure the correct documentation, which is disproportionately difficult for the low-income vulnerable populations served by these funding sources. Households may not have the funds or free time to get to government offices to secure the needed documentation.

Staff Response: To clarify the comments that reference cost to service providers, program administrators and local governments, this rule applies only to a specific portfolio of multifamily properties. The rule is not applicable to local service providers, administrators or local governments. The preamble of this rule has been expanded to reflect some of the commenter's concerns with the costs and burdens noted.

As it relates to the incidental costs that will be borne by the properties or households, it is not within the Department's authority to simply not apply the federal requirements. The Department will assist properties in training their staff on documentation requirements and SAVE access in an effort to minimize the work added for properties and to ease the experience for households.

It should be noted that in response to Commenter 18, their suggestion that properties will not have access to SAVE is incorrect; multifamily properties will have access to SAVE through the Department's Memorandum of Agreement and are required to use SAVE rather than submit households to the Department for verification. System updates and transmittal methods are anticipated to be minimal because of this.

No changes to the rule are made in response to these comments.

§10.612 and §10.628 - Overcompliance (12)

Commenter 12 suggests that passing the responsibility for verifying immigration documentation to development owners and managers will lead to overcompliance as properties ensure they follow the guidelines.

Staff Response: While the Department is taking no action to promote properties' 'overcompliance' it does expect properties to fully comply. No changes to the rule are made in response to this comment.

§10.612 and §10.628 - Evolving Federal Direction (16)

Commenter 16 states that pending litigation and evolving federal direction are also relevant to this rule's rollout. PRWORA related federal requirements and enforcement may shift through court orders or updated federal guidance after TDHCA has begun implementation. They note that TDHCA has treated federal notices as effective immediately, while other states are delaying rule changes until litigation is resolved. They believe this creates a real risk that owners will expend significant resources implementing procedures that later require adjustment, and that tenant files already in process will be treated inconsistently unless TDHCA can issue uniform transitional instructions.

Staff Response: To ensure federal compliance the Department is implementing the rule promptly and is not waiting on litigation resolution in other states. If additional federal guidance is released, the Department will remain compliant and disseminate clear instructions or propose any necessary rule adjustments. No changes to the rule are made in response to these comments.

§10.612 and §10.628 - Increased Legal and Compliance Exposure, Concerns of Discrimination and Eviction (5)(6)(8)(15)(18)

Commenters 5 and 15 suggest that the rule may cause discriminatory assumptions to be made about tenants or their guests, in violation of the Fair Housing Act. Commenter 6 believes that requiring housing providers to collect and verify immigration documentation may cause Owners and local governments to face fair housing complaints or legal liability if documentation practices are not applied consistently.

Commenter 18 references the National Housing Law Project's brief on immigration requirements and believes that if PRWORA is applied improperly the Department could be subject to discrimination claims under federal civil rights laws.

Commenter 8 also believes it is critical in issuing a rule that touches on issues of race and national origin that the rule is narrowly tailored to ensure its obligation to not discriminate. Their suggested revisions (relating to narrowing the verifications only to the funded units in the property and limiting it to only new properties) will help address that concern. Commenter 8 also feels that the Department's duty to not make housing unavailable based on race and national origin is not met because the rule does not address enforcement and implies that residents should be evicted based on their national origin.

Commenter 8 specifically suggests that the following sentence be added: "Owners are not required to evict tenants or refuse to renew leases of tenants pursuant to this rule. Owners may be required to ensure that occupants who are not qualified aliens are moved to Units that are not receiving HOME, HOME-ARP Rental or NHTF funding."

Staff Response: The Department denies any direct or indirect allegation of illegal race or national origin discrimination. Properties are expected to use documentation requested from households in all covered units, regardless of race or national origin,

to objectively verify those documents against guidance provided by the Department. If that documentation requested does not allow a property to confirm legal status, then the property will enter the household in the SAVE system. In response to Commenter 8, the Department cannot say that properties will not be required to evict tenants or refuse to renew leases under this rule; if a household at lease renewal is unable to be confirmed for legal status, the property will be in a position to not renew the lease for good cause because the household will not meet a HOME, HOME-ARP Rental, or NHTF requirement. No changes to the rule are made in response to these comments.

§10.612(a)(6) - Rule Prohibiting "harboring" of non-qualified aliens (5)(16)(18)

Commenters 5 and 18 noted that the rule prohibiting harboring of an unqualified alien was not required by federal law, nor in federal guidance, and as such should be removed from the rule to avoid having a chilling effect on access to housing for eligible families. Commenter 5 noted that they saw a similarly chilling effect in 1996 and 2019 when similar policy changes occurred. They note that the Department has not provided any reason or justification for the inclusion of this clause in the rule, and that it is unclear what provision in the Department's enabling statute allows it to impose such a requirement.

Commenters 5 and 18 also noted the term 'harboring' is vague and that without the rule explaining what conduct would meet the definition of 'harboring,' it will create fear and confusion that will increase homelessness and housing instability for children, youth and mixed status households. The vagueness of this section, noted by Commenter 18, leaves too much interpretation for developments, property owners and residents who are not legal experts which could lead to wrongful evictions or denial of housing. Commenter 5 notes that simply hosting an undocumented visitor in one's home or even living with an undocumented family member would not constitute harboring under 8 U.S.C. §1324. They strongly urge that this requirement be removed from the rule.

Commenter 18 notes that harboring an alien in the US is already a violation of law under 8 USC §1324, so it is not necessary to require tenants to sign a lease attesting that they will follow one specific law.

Commenter 16 states that this requirement imports an undefined criminal-law concept into a lease without an objective monitorable compliance standard. It will be explained and applied inconsistently across properties, increase fair housing and other liability risk, and create tenant confusion about ordinary lawful conduct. They suggest alternatively that lease signers certify that the information and documentation submitted for verification is true and complete, acknowledge consequences for knowingly providing false information, and agree to notify the Owner when lease signers change so any new signatory can be verified.

Staff Response: To address some of the concerns raised, this section of the rule has been revised to remove reference to "harboring" specifically since that may be perceived as triggering the federal definition for harboring at 8 USC Section 1324. The rule now references that if a household member is staying in the unit, to the extent that they would need to be added to the lease under the property's rules or terms of the lease (typically more than five days), then the lease must be updated to include such individuals, and any further required analysis of household income and legal status must be promptly performed by the property. The signers of the lease must attest that such household member has legal status. The Department will provide the lease attestation form for Owners to provide to tenants.

Other Comments - Lack of Accessible Information (18)

Commenter 18 was concerned that the information about the new requirements is inaccessible. The HUD grant agreements which TDHCA references in its materials are not publicly available. HHS and HUD notices reference future guidance that is also not yet available. They note that it is unclear who will be training developments.

Staff Response: Information has been made public as allowable. Documents that are in TDHCA's possession and not subject to exception or exemption may be requested through an open records request.

Other Comments - Creating New Law (19)

Commenter 19 suggests that by formulating these rules, TDHCA is surpassing its authority and superseding the law-making legislative body.

Staff Response: TDHCA is authorized by Tex. Gov't Code §2306.053 to adopt rules governing the administration of the Department and its programs.

Other Comments (3)(13)(14)

Commenter 14 attended the hearing and sought information on how to access TDHCA grants and assistance for a proposed property concept, and also requested a list of existing assisted properties.

Commenter 13 asked whether the household verification form and other guidance around documentation has been created and made available yet for the multifamily properties. They note that they would like to make comment on those and wanted to know when that would be available.

Commenter 13 asked if the plan was to give SAVE access to all 391 properties subject to this rule.

Commenter 3 asked in the hearing if HUD's release of 214 guidance would prompt the Department to align with that guidance going forward.

Staff Response: Commenter 14 was individually contacted to assist them with their interest in the Department. The household verification form and other documents will be made available and their input will be sought as those are crafted. Yes, other than federally debarred entities, the intent is to provide SAVE user access to all properties subject to the rule. HUD's release of 214 guidance is not applicable to these programs or properties unless otherwise triggered for a property by other layered funding on that property.

STATUTORY AUTHORITY. The amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the amendment affects no other code, article, or statute.

§10.612. Tenant File Requirements.

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

(1) A Department approved Income Certification form signed by all adults. At the time of program designation as a low

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

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

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

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

(5) For HOME, HOME-ARP Rental, and NHTF Developments, in accordance with §10.628 of this subchapter (relating to Verification of Occupant Legal Status for HOME, HOME-ARP Rental, and NHTF Developments) documentation to support that legal status of all persons signing the lease has been verified; and

(6) For HOME, HOME-ARP Rental, and NHTF Developments, in accordance with §10.628 of this subchapter, an attestation, as provided by the Department for use by Developments, signed by all parties signing the lease that to their knowledge there are no occupants of the Unit that would be required to be included on the lease under the property's lease stipulations, that do not have qualified legal status under PRWORA.

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

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

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

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

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

(B) All Bond Developments with less than 100% of the Units set aside for households with an income less than 50% or 60% of area median income. If subsequent legislation allows for the use of the Average Income minimum set aside for the Bond program, the income threshold will increase to 80% area median income.

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

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

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

(1) HOME, TCAP RF, NHTF, and HOME-ARP Developments must complete a recertification with verifications of each assisted Unit every sixth year of the Development's Affordability Period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME, TCAP RF, NHTF, HOME-ARP Development Affordability Period is the effective date in the HOME, TCAP RF, NHTF, and HOME-ARP LURA. Example 612(1): A HOME Development with a LURA effective date of May 2020, will have the following years of the affordability period:

(A) Year 1: May 15, 2020 - May 14, 2021;

(B) Year 2: May 15, 2021 - May 14, 2022;

(C) Year 3: May 15, 2022 - May 14, 2023;

(D) Year 4: May 15, 2023 - May 14, 2024;

(E) Year 5: May 15, 2024 - May 14, 2025;

(F) Year 6: May 15, 2025 - May 14, 2026;

(G) Year 7: May 15, 2026 - May 14, 2027;

(H) Year 8: May 15, 2027 - May 14, 2028;

(I) Year 9: May 15, 2028 - May 14, 2029;

(J) Year 10: May 15, 2029 - May 14, 2030;

(K) Year 11: May 15, 2030 - May 14, 2031; and

(L) Year 12: May 15, 2031 - May 14, 2032.

(2) In the scenario described in paragraph (1) of this subsection, all households in HOME, TCAP RF, NHTF, and HOME-ARP Units must be recertified with source documentation during the sixth and twelfth years or between May 15, 2025, to May 14, 2026, and between May 15, 2031, and May 14, 2032.

(3) In the intervening years the Development must collect a self-certification within 120 days before the anniversary of the effective date of the original Income Certification from each household that is assisted with HOME, TCAP RF, NHTF, and HOME-ARP funds. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's Income Certification form will be accepted. If the household reports on their self-certification that their annual income exceeds the current 80% applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then an annual income recertification with verifications is required.

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

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

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

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2026.

TRD-202601556
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: January 23, 2026
For further information, please call: (512) 475-3959

10 TAC §10.628

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F Compliance Monitoring, §10.628 Verification of Occupant Legal Status for HOME, HOME-ARP Rental and NHTF Developments, with changes to the proposed text as published in the January 23, 2026 issue of the *Texas Register* (51 TexReg 355). The rule will be republished.

The purpose of the rule is to is to provide clarity with how adherence to Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) will be implemented for multifamily HOME, HOME-ARP Rental and National Housing Trust Fund properties in the Department's portfolio as required by the federal direction provided in the 2025 grant agreements issued by the Unites States Department of Housing and Urban Development (HUD). PRWORA provides that an alien who is not a qualified alien is not eligible for any federal public benefit.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it is subject to the exception under §2001.0045(c)(4) which excepts rules that are necessary to receive a source of federal funds or to comply with federal law.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

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

1. The rule does not create or eliminate a government program but relates to changes to an existing activity: the implementation and applicability of Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) in the Department's HOME, HOME-ARP and NHTF properties.

2. The rule will require additional work that creates one or more new employee positions. One position will be used to coordinate all issues surrounding PRWORA across multiple programs at the Department, including creating and providing training, developing forms and notices in collaboration with legal staff, providing vendor support if needed, updating and developing the documentation charts and checklists to be used by properties, assisting Compliance staff in developing monitoring tools, and setting up properties with access to the SAVE system. Additional staffing needs may vary depending on what portion of tenants requiring verification are submitted to the Department for verification and what portion are performed by properties. Per the rule, properties are required to perform the verifications themselves unless not permitted to do so (for instance if they have been federally debarred they may be precluded from accessing the SAVE system). Under that premise, it is anticipated that the Department will not have significant verifications to perform. In either case the costs of all new positions are federal eligibly reimbursable expenses under the applicable program grants (because PRWORA is now applicable to HOME, HOME-ARP, NHTF, ESG and CSBG, in addition to previous programs which were already subject to PRWORA, administrative funds may be utilized from those programs to support the staffing needs). The amendment does not generate a reduction in work that would eliminate any employee positions.

3. The rule does not require additional future legislative appropriations; the added position(s) are absorbed with existing appropriated administrative funds.

4. The rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The rule is creating a new regulation because it is necessary to receive a source of federal funds or to comply with federal law.

6. The rule does expand an existing regulation to provide additional requirements, however the expanded regulations are required to comply with federal law.

7. The rule does increase the number of individuals subject to the rule's applicability. Through this rule the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) will be implemented for multifamily HOME, HOME-ARP Rental and National Housing Trust Fund properties in the Department's rental portfolio as required by the federal direction provided in the 2025 grant agreements issued by the Unites States Department of Housing and Urban Development (HUD). PRWORA provides that an alien who is not a qualified alien is not eligible for any federal public benefit. Therefore, individuals not previously subject to this verification will now require verification of US Citizen, US National, or Qualified Alien status.

8. Effect on the state's economy. Public comment received on the rule suggests that the rule action creates measurable operational costs that can affect property performance at scale. They believe that even modest increases in unit vacancies or turnover across the affected portfolio (approximately 391 properties) can reduce rental revenue and increase operating costs, raising the risk of financial distress at impacted developments. The comments suggest that those impacts can flow through to local economies through reduced local spending, tighter rental supply, and a potential decrease in local property tax collections. Additionally, commenters suggest that requiring verification of eligible status for households will force mixed status families to choose between staying together or being evicted and when families lose access to housing the adult's ability to maintain stable employment is compromised as well as the children's ability to stay in school. Commenters suggest both of these issues create immediate and long-term economic impacts on the state.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the rule and received comment that the amendment will create an economic effect on small or micro-businesses or rural communities. Comment suggests that the rule requirements are not reduced for small operators or rural properties and that in fact, they may be faced with more household verifications because they tend to more frequently utilize the programs that are applicable. Small operators and rural properties often have limited onsite capacity, increasing the proportional burden and the risk of findings. When verifications escalate to nonrenewal and a household will not vacate, properties can incur foreseeable enforcement costs for court and attorney fees, staff time and the costs of turning over a unit.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has received public comment that there may be an economic effect on local employment. As noted above, comment suggests that requiring verification of eligible status will force mixed status families to choose between staying together or being evicted and if families lose access to housing, the adult's ability to maintain stable employment is compromised. Further, commenters noted that for tenants having to handle document retrieval, notices, follow-up, and dispute resolution, it can require time off work or missed wages, particularly for hourly workers and households with limited transportation or limited access to document-issuing agencies. When verification delays or disputes prevent a household from leasing a unit or contribute to housing loss, households may be forced to relocate farther from work or leave the city entirely, disrupting commute time, childcare arrangements, and schedule reliability. That potentially increases missed shifts and turnover risk for local employers.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the rule would be ensuring compliance with federal guidance and ensuring that federal public benefits are only being received by qualified aliens, US Nationals or US citizens.

Comment was also received that denotes public costs. They suggest that this rule only applies to HOME, HOME-ARP Rental, and NHTF developments in TDHCA's monitored portfolio, while comparable units administered by local jurisdictions using the same federal programs may not be subject to the same state-level procedures. That unevenness can encourage program shopping, concentrating administrative burden and compliance risk in TDHCA's portfolio and increasing lease-up and vacancy friction at impacted properties. Because of the new requirements there also may be reduced owner participation in the programs. If TDHCA-administered resources carry additional tenant-facing requirements beyond what similarly situated programs require elsewhere, some owners may be less willing to pursue TDHCA HOME, HOME-ARP Rental, or NHTF financing, which would directly reduce production and preservation capacity.

One of the costs commenters noted was the impacts expected on mixed-status households and the resulting harm to eligible members. According to commenters, HUD's Regulatory Impact Analysis for its proposed Section 214 rule reports that within mixed families, 70% of members are eligible and 30% are ineligible, and that among eligible members, 65% are children. Even when the policy objective is compliance, verification failures, delays, or nonresponses can reduce assistance for otherwise eligible members. Because most eligible members in mixed-status households are children, these disruptions and reductions can fall disproportionately on children.

As a further cost, a household that does not currently have access to documents that confirm their legal status may have to take steps to obtain copies of birth certificates, or other applicable documents and pay associated fees for those items.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has determined that for each year of the first five years the rule is in effect, enforcing or administering the rule may have some costs to the Department, to the extent that the Department will be adding one or more staff members as described more fully earlier in this preamble.

One of the commenters applied HUD's Paperwork Reduction Act benchmark to this rule and concluded that there would be significantly increased property and portfolio costs. They noted that the property costs will include routine verification plus follow-up workload for delayed or disputed cases and documentation requirements. If this rule is applied not only to units assisted with the applicable federal program funds, but all units in those properties, those costs will be more significant. There may also be downstream costs when disputes escalate, including vacancy loss and legal and court-related costs.

SUMMARY OF PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requested comments on the rule and also requested information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period was held January 30 to March 3, 2026, to receive input on the proposed action. Comment was received from 20 commenters: 1) Accolade Property Management; 2) American Civil Liberties Union - Texas; 3) Roger Arriaga (hearing commenter); 4) Representative John Bryant; 5) Children's Defense Fund - Texas; 6) City of El Paso, Department of Human and Community Development; 7) Every Texan (hearing commenter); 8) Foundation Communities and New Hope Housing; 9) Brian Gamble (hearing commenter); 10) Representative Barbara Gervin-Hawkins; 11) Representative Mary Gonzalez; 12) Laredo Immigrant Alliance; 13) Whitney Parra (hearing commenter); 14) Kathleen Petty (hearing commenter); 15) City of Pharr, Grants Management and Community Development; 16) Texas Affiliation of Affordable Housing Providers and Texas Apartment Association; 17) Texas House Democratic Caucus; 18) Texas Housers; 19) US Hispanic Contractor's Association; and 20) Maria Watkins (hearing commenter).

The comments from the Texas House Democratic Caucus (Commenter 17), reflect the input from the following 29 Texas House Representative Members: Gene Wu; Donna Howard; Ramón Romero, Jr.; Joe Moody; Suleman Lalani; Jessica González; Mihaela Plesa; Ron Reynolds; Senfronia Thompson; Ray Lopez; Lulu Flores; Erin Zwiener; Josey Garcia; Christina Morales; Vikki Goodwin; Jolanda Jones; Armando Martinez; Armando Walle; Jon Rosenthal; Diego Bernal; John Bucy III; Toni Rose; Alma Allen; Rafael Anchía; Ana Hernandez; Chris Turner; Cassandra Garcia Hernandez; Salman Bhojani; and Linda Garcia.

In the following summary of comment, the numbers denote the commenters who made comments on that topic. For instance, if a comment is followed by five numbers, the five noted commenters that match those numbers are the entities or individuals who made those comments.

Comments on Preamble and Required Rule Analysis (5)(13)(16)(18)

Government Growth Impact Statement: Commenter 16 suggests that TDHCA should reconcile staffing assumptions - one preamble provided indicated that there were no staffing needs, while the other preamble anticipated 1 to 2 positions. They requested that the preamble specify whether TDHCA will absorb the work or add staffing and provide detail on the federal administrative funds that will support the position. They also requested that TDHCA address training, standardized forms/notices, secure submission methods, vendor support and monitoring tools. Commenter 13 also brought up this issue in the public hearing.

Adverse Economic Impact on Small Businesses and Rural Communities: Commenter 16 suggests that the Department's 'no economic effect' determination should be reconsidered. The rule requirements do not scale down for small operators or rural properties with limited onsite capacity, increasing the proportional burden and the risk of findings. When verifications escalate to nonrenewal and a household will not vacate, properties can incur foreseeable enforcement costs for court and attorney fees, staff time and the costs of turning over a unit.

Effect on State's Economy, Local Employment Impact Statement: Commenter 16 feels TDHCA's statements concluding no effect on the state's economy and no local employment impact should be amended. The proposed requirements create measurable operational costs that can affect property performance at scale. Even modest increases in vacancies or turnover across the affected portfolio can reduce rental revenue and increase operating costs, raising the risk of financial distress at impacted developments. Those impacts can flow through to local economies through reduced local spending, tighter rental supply, and a potential decrease in local property tax collections.

Commenter 5 also disagrees with the preamble of the rule that said the rule actions would not affect the state's economy. They suggest that the rules will force mixed status families to choose between staying together or being evicted and it will make children that are US citizens at risk of homelessness. When families lose access to housing the adult's ability to maintain stable employment is compromised as well as the children's ability to stay in school; both of these issues create immediate and long-term economic impacts on the state.

Commenter 16 suggests TDHCA should also acknowledge foreseeable local employment impacts. For tenants having to handle document retrieval, notices, follow-up, and dispute resolution, it can require time off work or missed wages, particularly for hourly workers and households with limited transportation or limited access to document-issuing agencies. More significantly, when verification delays or disputes prevent a household from leasing a unit or contribute to housing loss, households may be forced to relocate farther from work or leave the city entirely, disrupting commute time, childcare arrangements, and schedule reliability. That potentially increases missed shifts and turnover risk for local employers and should be reflected in the local employment impact discussion. Commenter 18 also states that contrary to the Department's assertion, there will clearly be economic costs for households to comply with these sections.

Public Benefit/Cost: Commenter 16 indicates that this rule only applies to HOME, HOME-ARP Rental, and NHTF developments in TDHCA's monitored portfolio, while comparable units administered by local jurisdictions using the same federal programs may not be subject to the same state-level procedures. That unevenness can encourage program shopping, concentrating administrative burden and compliance risk in TDHCA's portfolio and increasing lease-up and vacancy friction at impacted properties. The fiscal note should acknowledge the risk of reduced owner participation. If TDHCA-administered resources carry additional tenant-facing requirements beyond what similarly situated programs require elsewhere, some owners may be less willing to pursue TDHCA HOME, HOME-ARP Rental, or NHTF financing, which would directly reduce production and preservation capacity.

Commenter 16 also asks that TDHCA acknowledge impacts on mixed-status households and the resulting harm to eligible members. HUD's Regulatory Impact Analysis for its proposed Section

214 rule reports that within mixed families, 70 percent of members are eligible and 30 percent are ineligible, and that among eligible members, 65 percent are children. Even when the policy objective is compliance, verification failures, delays, or nonresponses can reduce assistance for otherwise eligible members. Because most eligible members in mixed-status households are children, these disruptions and reductions can fall disproportionately on children. The public benefit/cost note should reflect this as a public cost.

Fiscal Note: The fiscal note should address both Department implementation costs and regulated-entity compliance costs. Department costs include training, standardized forms and notices, secure submission methods, escalation support, and monitoring protocols. Regulated-entity costs include routine verification plus follow-up workload for delayed or disputed cases and documentation requirements, with significant sensitivity to scope if practices spill beyond the assisted-unit universe. TDHCA should also acknowledge foreseeable downstream costs when disputes escalate, including vacancy loss and legal and court-related costs.

Commenter 16 has applied HUD's Paperwork Reduction Act benchmark to support how this rule has costs. As part of that comment they estimate significantly increased property and portfolio costs. They specifically request that TDHCA should acknowledge this cost in its fiscal note.

Staff Response: Staff has revised the rule preambles in response to the feedback provided.

§10.612 and §10.628 - Overall Opposition and Request to Withdraw or Delay the Rules (2)(4)(5)(6)(7)(10)(11) (12)(17)(18)(19)

Multiple commenters suggest that because more guidance is expected from HUD, it is premature to proceed with the rules; particularly, that since HUD has indicated that it will release more guidance so the Department should wait until that occurs (5)(12)(18). Commenter 12 believes the Department is overcomplying by preceding HUD guidance. Commenter 5 and 18 suggests that the rulemaking should be paused until further HUD guidance is available. They suggest that the Department acting prior to additional federal guidance may create legal liability for the state.

Commenter 2 believes the rule as written raises preemption concerns and would result in the wrongful denial of eligible tenants. They also raised concerns that landlords and public housing authorities will have to collect information that could potentially expose individuals to enforcement and the ability for immigrant communities to access safe and affordable housing.

Commenter 2 asserts that the rule fails to adhere to Section 401(a) of PRWORA and may cause eligible families to be excluded. The guidance from TDHCA provides no information on the verification process nor indicates any acceptable documentation from tenants who are qualified aliens, while only accepting proof of US citizenship as valid documentation. If the current documentation list is used, individuals may have their applications erroneously denied or be wrongfully evicted.

Commenter 7 also noted that one in four children live in mixed status families and they will be affected by this policy and the rule rollout is premature. They note that according to a 2024 Texas kids count, Hispanic or Latino children in Texas are 36% more likely to live in households facing high cost of living burdens.

Commenters 4, 6, 10, 11, 17 and 18 were strongly opposed to the rules and urged TDHCA to withdraw them. The rule will have a chilling effect on mixed-status households which will discourage entire households from seeking the housing stability they are legally entitled to receive. The rule will cause fear and confusion statewide. U.S. citizen children in mixed status households will be left without stable homes, violence survivors will be forced to choose between safety and status, elderly immigrants will be severed from their safety net, and working families will be pushed into greater housing insecurity.

Commenters 4, 7 and 18 believe that the rules will erode trust between immigrant communities and public institutions. Commenters 4 and 10 also noted that the rule contradicts the Department's fundamental mission. Commenter 6 felt that the rule will undermine efforts to prevent homelessness and maintain housing stability.

Commenter 11 indicates that eligibility for federal subsidized housing has never been restricted to US citizens and embedding immigration enforcement into state housing rules undermines legislative intent and misdirects limited state resources. Commenter 11 believes through this rule the Department jeopardizes an estimated 9,000 to 28,000 units statewide.

Commenters 4, 10 and 17 urged that the Department discuss these concerns with affected communities and advocates prior to taking further rule actions.

Commenter 19 feels the rule changes cause a cascading effect on Texas Communities, workplaces, schools, healthcare and individual security and safety. There will be a direct impact on lawful DACA recipients. They also feel that the rule changes will cause economic destabilization as DACA workers facing loss of housing will cripple industries relying on lawful DACA workers. There will be widespread evictions and forced displacement. These restrictions will affect mixed-status households most significantly, and ultimately affect landlords when there are losses to housing and workforce.

Commenters 5 and 8 suggest that TDHCA should clarify that nonprofit charitable housing providers are exempt from PRWORA verification requirements, but they also acknowledge that the Notice creates confusion because it does not relieve states from ensuring all programs are compliant with PRWORA. They feel that this ambiguity is a reason that the rulemaking should be delayed until further guidance is released. They think that it will be very difficult for the Department to provide clarity without HUD having provided that clarity first.

Staff Response: Per the HUD notice of November 26, 2025, and the 2025 federal funding agreements states are not relieved from the requirements to ensure that all relevant programs are in compliance with PRWORA. HUD places the burden on TDHCA to ensure compliance with PRWORA, even before "new guidelines" are issued by HUD. Therefore, staff does not recommend withdrawing or deferring the rule. TDHCA does not believe it is 'overcomplying' but rather fully complying. Should additional federal guidance be released that provides any greater specificity on how PRWORA should be applied to the programs, TDHCA will certainly adhere to that guidance. The TDHCA rule changes are specific enough to reflect adherence to the requirements of the federal funding agreements and to properly put program participants on notice, but still provide sufficient leeway for further guidance to be issued to our program participants should federal guidance be forthcoming. No change is recommended to the rule in response to this topic of comment.

As it relates to the comment that eligible families may be excluded because the guidance from the Department relating to al-

lowable documentation does not indicate acceptable documentation from tenants who are qualified aliens, but only US citizens, the document includes US Citizenship and US national Department is consistently looking to improve and update the guidance. Commenter 2 is encouraged to contact Gavin Reid (gavin.reid@tdhca.texas.gov) at the Department to provide specific suggested additions or revisions to the guidance.

The Department does not interpret enforcement of federal requirements as contradictory to its mission. Safeguarding the state's ability to access HOME, NHTF, and HOME-ARP funds through compliance with federal requirements is essential to keeping these funds available to qualified Texans.

As it relates to the impact on households, effects are associated with PRWORA, not necessarily the Department's applicability of PRWORA. By pushing the effective date of the rule to August 1, 2026, more notice is provided for households.

As it relates to the comments that the Department should discuss issues of the rule and its implementation with affected communities and advocates, TDHCA hosted a public hearing and a public comment period which was announced through the Department's email distribution groups. The Department will continue to seek input as documentation guidance is developed.

As it relates to the suggested exemption for nonprofit organizations, because the Department is still accountable for ensuring the PRWORA requirements as satisfied, the Department will clarify in the rule that in the case of properties in which the ownership entity is a nonprofit organization the property will have the option of either performing verifications themselves under §10.628(f)(2)(A), or gathering the required documentation and having the Department perform the verification under §10.628(f)(2)(B).

Concerns with the SAVE System (2)(5)(18)

Commenters 2, 5 and 18 indicate that the rule mandates the use of SAVE; however they believe the SAVE system is faulty, raises privacy and security concerns, increases risk of datamining, and has errors that render it an unreliable source for legal status. According to one source it has an error rate of at least 14%. Commenter 18 also raises concerns that SAVE is inaccurate, constantly changing and generates unclear reports. They are concerned also that federal employees and federal immigration enforcement officials may use SAVE to track individuals. The SAVE system's reliance on social security data does not provide definitive status information and is prone to inaccuracies. Commenter 18 is also concerned that SAVE error rates will result in eligible Texans losing access to housing.

Commenters 5 and 18 believes that the use of SAVE where additional verification is needed may cause excessive wait times up to 3 weeks for a household awaiting housing assistance, adding to precarious housing situations or adding additional housing costs.

Staff Response: When verification is unable to be satisfied using the documents provided by a household, the only system available to the Department for verification, and therefore available to properties, is the SAVE system. No changes to the rule are made in response to these comments.

§10.612 and §10.628 - Administrative and Cost Burden (4)(6)(7)(11)(12)(15)(17)(18)

Commenters noted two primary categories of costs and burden - those on property owners and providers, and those on households.

Commenters 4, 7 and 18 noted that the rules will create administrative burdens and costs for property owners and providers, including costs associated with reduced occupancy. Commenter 6 also thinks the rule requirements will increase staffing, training and monitoring responsibilities that will divert resources away from direct service delivery. Commenters 11, 12, 15 and 17 noted that the verification process will impose steep burdens on local governments and program administrators.

Commenter 18 feels that the requirements are an unfunded mandate that will significantly impact developments across the state. There will be unavoidable delays and costs related to document collection, internal review, errors and appeals. Having to check for legal status will be an entirely new process for most properties. There will also be costs associated with creating new processes, staff training, ensuring system compatibility. These steps will be particularly difficult for smaller owners many of which are located in rural areas.

Commenter 18 also thought that costs would be significant because properties would not have access to SAVE through the existing Memorandum of Agreement between TDHCA and Department of Homeland Security. If they can't access SAVE themselves, properties would have to submit their household verifications to TDHCA for processing. The system and method they would need to use would likely be substantial and fall more on small or micro-businesses and rural communities.

Commenter 12 also notes the administrative burden on Texans who will have to sacrifice work hours to obtain these benefits. Commenters 4, 7 and 18 note that the rule will create delays and increase costs for tenants. Commenters 7 and 18 also note the delays and costs for tenants as they seek to procure the correct documentation, which is disproportionately difficult for the low-income vulnerable populations served by these funding sources. Households may not have the funds or free time to get to government offices to secure the needed documentation.

Staff Response: To clarify the comments that reference cost to service providers, program administrators and local governments, this rule applies only to a specific portfolio of multifamily properties. The rule is not applicable to local service providers, administrators or local governments. The preamble of this rule has been expanded to reflect some of the commenter's concerns with the costs and burdens noted.

As it relates to the incidental costs that will be borne by the properties or households, it is not within the Department's authority to simply not apply the federal requirements. The Department will assist properties in training their staff on documentation requirements and SAVE access in an effort to minimize the work added for properties and to ease the experience for households.

It should be noted that in response to Commenter 18, their suggestion that properties will not have access to SAVE is incorrect; multifamily properties will have access to SAVE through the Department's Memorandum of Agreement and are required to use SAVE rather than submit households to the Department for verification. System updates and transmittal methods are anticipated to be minimal because of this.

No changes to the rule are made in response to these comments.

§10.612 and §10.628 - Overcompliance (12)

Commenter 12 suggests that passing the responsibility for verifying immigration documentation to development owners and managers will lead to overcompliance as properties ensure they follow the guidelines.

Staff Response: While the Department is taking no action to promote properties' 'overcompliance' it does expect properties to fully comply. No changes to the rule are made in response to this comment.

§10.612 and §10.628 - Evolving Federal Direction (16)

Commenter 16 states that pending litigation and evolving federal direction are also relevant to this rule's rollout. PRWORA related federal requirements and enforcement may shift through court orders or updated federal guidance after TDHCA has begun implementation. They note that TDHCA has treated federal notices as effective immediately, while other states are delaying rule changes until litigation is resolved. They believe this creates a real risk that owners will expend significant resources implementing procedures that later require adjustment, and that tenant files already in process will be treated inconsistently unless TDHCA can issue uniform transitional instructions.

Staff Response: To ensure federal compliance the Department is implementing the rule promptly and is not waiting on litigation resolution in other states. If additional federal guidance is released, the Department will remain compliant and disseminate clear instructions or propose any necessary rule adjustments. No changes to the rule are made in response to these comments.

§10.612 and §10.628 - Increased Legal and Compliance Exposure, Concerns of Discrimination and Eviction (5)(6)(8)(15)(18)

Commenters 5 and 15 suggest that the rule may cause discriminatory assumptions to be made about tenants or their guests, in violation of the Fair Housing Act. Commenter 6 believes that requiring housing providers to collect and verify immigration documentation may cause Owners and local governments to face fair housing complaints or legal liability if documentation practices are not applied consistently.

Commenter 18 references the National Housing Law Project's brief on immigration requirements and believes that if PRWORA is applied improperly the Department could be subject to discrimination claims under federal civil rights laws.

Commenter 8 also believes it is critical in issuing a rule that touches on issues of race and national origin that the rule is narrowly tailored to ensure its obligation to not discriminate. Their suggested revisions (relating to narrowing the verifications only to the funded units in the property and limiting it to only new properties) will help address that concern. Commenter 8 also feels that the Department's duty to not make housing unavailable based on race and national origin is not met because the rule does not address enforcement and implies that residents should be evicted based on their national origin.

Commenter 8 specifically suggests that the following sentence be added: "Owners are not required to evict tenants or refuse to renew leases of tenants pursuant to this rule. Owners may be required to ensure that occupants who are not qualified aliens are moved to Units that are not receiving HOME, HOME-ARP Rental or NHTF funding."

Staff Response: The Department denies any direct or indirect allegation of illegal race or national origin discrimination. Properties are expected to use documentation requested from households in all covered units, regardless of race or national origin, to objectively verify those documents against guidance provided by the Department. If that documentation requested does not allow a property to confirm legal status, then the property will enter the household in the SAVE system. In response to Commenter 8, the Department cannot say that properties will not be required to evict tenants or refuse to renew leases under this rule; if a household at lease renewal is unable to be confirmed for legal status, the property will be in a position to not renew the lease for good cause because the household will not meet a HOME, HOME-ARP Rental, or NHTF requirement. No changes to the rule are made in response to these comments.

§10.628(b) - Relating to Applicability of the Rule to Existing Properties (8)(9)

Commenter 8 requests that the rule only be applicable to future properties funded with NHTF, HOME and HOME-ARP. The commenter also requests that the rule clarify that the reference to HOME developments is limited to TDHCA HOME funds, not local. Commenter 9 also asked for clarity around what was meant by saying that properties subject to 214 satisfied the rule's verification requirements.

Staff Response: While not revising the rule to only apply to future properties, the rule has been clarified to reflect that it only applies to Department-funded HOME activities. Also, clarity has been added to the rule for properties subject to 214 that the individual does not require further verification if they have been verified using the 214 screening process.

§10.628(b) - Relating to Floating Units (1)(5)(8)(16)(18)

Commenters 1, 5, 8, 16 and 18 requested that the rule be amended to clarify that verification requirements are only applicable to lease signers on units designated as assisted with HOME, HOME-ARP, or NHTF, not to all units in the property. Unit designations are clearly established through Department systems, and it is readily identifiable which households are benefiting from these programs. Commenter 1, 16 and 18 state that applying this requirement to all Units within a property, particularly on a retroactive basis, could have significant unintended consequences, will increase workload and cause tenant-facing disruption. Commenter 5 states that voluntarily extending these new verification procedures to many more households who happen to live in buildings where other tenants receive federally funded housing assistance will unnecessarily increase the financial and administrative burden for both housing providers and for low-income families. It may also result in the displacement of a substantial number of households statewide. Commenter 16 suggests specific documentation to place in the file to affirm that the unit is a designated assisted units, including the effective date of each unit designation and the household occupying the unit as of that date.

Commenter 16 applies HUD's Paperwork Reduction Act benchmark to support why this rule should be applied only to units with those programs and not all units in the property. They estimate that there will be approximately 11,408 staff hours and more than $590,000 for a one-time cycle of checking status on only the 9,126 assisted units. This increases to 36,118 hours and an estimated $1.8 million cost when applied to all units in affected developments. Commenter 16 provided a property-level example of this.

Commenter 16 further notes that rural properties tend to have higher assisted-unit shares and are overwhelmingly funded with HOME, meaning many rural sites will be more affected even under a narrower application of the rule; they have fewer

staff resources to absorb fixed per-lease requirements. Urban properties are larger and more layered, including more NHTF and HOME-ARP, which increases operational complexity and the likelihood of administrative error if the rule is not explicit.

Staff Response: Currently the rule states that if a property has received HOME, HOME-ARP or NHTF funds ("program units"), and has floating units, all units in the property will be required to have PRWORA verification performed. It is not totally accurate for commenters to suggest that the requirements are not applicable to all units in the property. As with other federal requirements applicable to floating units, requirements are made applicable to all units to ensure that all residential floating units have the capacity to be HOME, NHTF, or HOME-ARP Rental units because a Development Owner must have the legal ability to swap designations with an equivalent sized unit in the Development if a household becomes noncompliant per specific program rules, such as going over the income designation or violating the student rule. If the rule were revised to only be applicable to the program units, there is a risk to the Department that HUD will determine that the Department is not appropriately administering the requirements for floating units.

§10.628(e) - Implementation Timing (7)(16)(18)(20)

Commenter 16 requests that this section be revised to provide a specific date as the effective date for the rule rather than just referencing 'the effective date' as without a specific date this may be interpreted differently.

Commenter 16 also asks that TDHCA specifically address when the rule is triggered for renewals because some leases are renewed months prior to their lease expiration. Without a clear standard, owners will face conflicting expectations about whether finalized lease files must be reopened or whether verification can wait until the next renewal cycle. Without this specificity there will be inconsistent tenant treatment and inconsistent monitoring outcomes. For HOME units, a formal lease renewal may not occur because leases can continue month to month, and full income recertification can be less frequent than annual. In those cases, owners need a defined recurring compliance touchpoint, such as the annual HOME review or annual household certification event, so "recertification or renewal" is not a null trigger.

Commenter 16 suggests that the triggering event be the fully executed lease document (when the last required signature is executed) that implements the assisted designation for that specific Unit not the lease term start or occupancy. Their suggestion is the objective file-based event TDHCA can monitor. Commenter 18 supports the need for greater specificity in how this rule applies in relation to leases being signed.

Commenter 18 and Commenter 7 recommends that the rule not apply to tenants who signed their leases prior to the rule going into effect but only those households that move in after the rule becomes effective. Commenter 18 and 20 also wanted to clarify that household members do not need to be re-qualified at every recertification, but only once.

Staff Response: To ensure adequate time for Owners to sign agreements relating to SAVE access, further develop forms and attestations, provide training, and improve the guidance from the Department as it relates to documentation, the Department is making the rule effective August 1, 2026. The rule also now adds clarity for when a unit recertification/renewal is effective for purposes of this rule and in relation to when a lease renewal may be signed. The rule has been clarified to specify that household members who have been verified once do not have to be reverified at lease renewal. Only any new signers of the lease will need to be verified.

§10.628(f)(2)(D) - Transmittal, Security, and Record Retention (16)

Commenter 16 suggests that as drafted, §10.628(f)(2)(D) relies on discretionary standards such as "sufficient" transmittal systems and "sufficient" evidence that verification occurred. In practice, that invites inconsistent implementation across Owners and vendors, encourages over collection and over retention of sensitive personal information, and makes monitoring subjective because TDHCA staff will be left to decide case by case what was "sufficient." This is especially risky because the rule authorizes three different verification pathways that generate different records and involve different parties. A single, vague record-keeping standard will not produce consistent files.

Commenter 16 suggests that the tenant file standard should instead be objective and method specific. Owners need to know exactly what must be kept for each method of verification, and TDHCA needs a uniform checklist that can be applied consistently during monitoring. Clear minimum documentation requirements reduce rework, reduce disputes and findings driven by missing or inconsistent paperwork, and better protect confidentiality by limiting retention to what is necessary to confirm compliance. Commenter 16 made specific suggested file documentation items for each category.

Staff Response: The Department agrees that clarity around "sufficiency" and clearer documentation requirements are beneficial for properties and monitoring staff. Revisions have been made to the rule.

§10.628(f)(2)(F) - (K) Pending, delayed, or disputed verification; appeals (9)(16)(18)

Commenter 16 notes that the proposed rule does not provide a uniform statewide process for cases in which verification does not immediately yield a confirmed result, which is a material gap because delayed, manual, and inconclusive outcomes are foreseeable. Under SAVE, the turnaround time is often outside an Owner's control under Department, vendor, or third-party workflows. HUD's proposed Section 214 framework similarly anticipates secondary verification and time extensions, confirming that non-instant results are a normal feature of verification administration. Without uniform statewide rules for notices, escalation, timelines, and file documentation, Owners will develop inconsistent site-level practices, applicants will be treated differently across properties, and TDHCA monitoring will become subjective, increasing disputes, vacancy friction, and avoidable compliance findings. They recommend specific additions to the rule to require written notice when legal status is not confirmed, establish uniform procedures for delayed, manual, or inconclusive results, define applicant processing while verification is pending, provide extension criteria and documentation, establish a dispute and cure process with roles and timeframes, and include a compliance safe harbor so an Owner is not cited solely because results are delayed when the Owner timely initiated verification, provided required notices, followed TDHCA procedures, and maintained required documentation.

They reference that the Texas Tribune reported that in the voting context, more than 5% of people flagged by SAVE as noncitizens were ultimately confirmed to be U.S. citizens in counties that conducted follow-up review. They suggest that in some small counties, most people flagged turned out to be eligible. Because veri-

fication is more complex than a binary citizenship check, making clear statewide procedures is essential. Commenter 16 requests that uniform standards be applied for non-confirmed results, including required written notices, timelines and extension criteria, documentation requirements, a dispute/cure process, and a compliance safe harbor when an Owner timely initiates verification and follows the TDHCA procedures, but results are delayed outside the Owner's control.

Commenter 16 recommends adding new sections §10.628(f)(2)(F) through (K), as submitted with their comment, to require written notice when legal status is not confirmed, establish uniform procedures for delayed, manual, or inconclusive results, define applicant processing while verification is pending, provide extension criteria and documentation, and establish a dispute and cure process with roles and timeframes.

Commenter 18 also noted that the rule does not address the need for notice to households when denied based on SAVE status, but that the Memorandum of Agreement does require that. So the rule being silent on this is problematic. Commenter 18 also feels that an appeal process would be beneficial. They estimate that up to 1,440 appeals may be generated from SAVE appeals. Commenter 9 also questions the lack of specificity around an appeal process when a property is appealing a SAVE determination.

Staff Response: The Department agrees that notice to tenants is required. There is also a need for more clear processes for delayed verifications, inconclusive verifications, timeframes for households submitting more information to Department disputes and appeals. These items will be addressed in forthcoming revisions to 10 TAC §10.802, Written Policies and Procedures, which will be presented to the Board in May 2026.

Other Comments - Lack of Accessible Information (18)

Commenter 18 was concerned that the information about the new requirements is inaccessible. The HUD grant agreements which TDHCA references in its materials are not publicly available. HHS and HUD notices reference future guidance that is also not yet available. They note that it is unclear who will be training developments.

Staff Response: Information has been made public as allowable. Documents that are in TDHCA's possession and not subject to exception or exemption may be requested through an open records request.

Other Comments - Creating New Law (19)

Commenter 19 suggests that by formulating these rules, TDHCA is surpassing its authority and superseding the law-making legislative body.

Staff Response: TDHCA is authorized by Tex. Gov't Code §2306.053 to adopt rules governing the administration of the Department and its programs.

Other Comments (3)(13)(14)

Commenter 14 attended the hearing and sought information on how to access TDHCA grants and assistance for a proposed property concept, and also requested a list of existing assisted properties.

Commenter 13 asked whether the household verification form and other guidance around documentation has been created and made available yet for the multifamily properties. They note that they would like to make comment on those and wanted to know when that would be available.

Commenter 13 asked if the plan was to give SAVE access to all 391 properties subject to this rule.

Commenter 3 asked in the hearing if HUD's release of 214 guidance would prompt the Department to align with that guidance going forward.

Staff Response: Commenter 14 was individually contacted to assist them with their interest in the Department. The household verification form and other documents will be made available and their input will be sought as those are crafted. Yes, other than federally debarred entities, the intent is to provide SAVE user access to all properties subject to the rule. HUD's release of 214 guidance is not applicable to these programs or properties unless otherwise triggered for a property by other layered funding on that property.

STATUTORY AUTHORITY. The rule is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rule affects no other code, article, or statute.

§10.628. Verification of Occupant Legal Status for HOME, HOME ARP Rental, and NHTF Developments.

(a) Purpose. The purpose of this section is to provide uniform Department guidance on the applicability and implementation of Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which provides that an alien who is not a Qualified Alien is not eligible for any federal or state public benefit.

(b) Applicability. This rule is effective beginning on August 1, 2026. This rule applies to existing and future National Housing Trust Fund, TDHCA HOME-ARP Rental and TDHCA HOME Developments for their state and federal affordability periods. For Developments with floating HOME, HOME-ARP Rental and NHTF Units, all prospective tenants intended to be on any Unit's lease must be verified as required by this section. For Developments with fixed HOME, HOME-ARP Rental and NHTF Units only prospective tenants intended to be on the lease for the fixed Units must be verified as required by this section. Populations that are documented by the Development as covered by the Violence Against Women Act (VAWA) or the Family Violence Prevention and Services Act (FVPSA) are excepted from having verification under this rule performed, unless required to do so under federal guidance.

(c) Definitions. The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program under which program eligibility is seeking to be determined or assigned by federal or state law.

(1) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b) or (c).

(2) State--The State of Texas or the Department, as indicated by context.

(3) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of program applicants.

(d) Owners must verify U.S. Citizen, U.S. National, or Qualified Alien status ("legal status") using the methods provided for in subsection (f) of this section for all residents that will be signing the lease.

(e) Implementation Timing.

(1) For All HOME, HOME ARP Rental, and NHTF Developments the Owner must confirm qualified legal status for each person signing the lease at initial lease-up of the Unit.

(2) For All HOME, HOME ARP Rental, and NHTF Developments that have Units occupied on or after August 1, 2026, the Owner must confirm qualified legal status for each person signing the lease at the time of the first Unit recertification or lease renewal after the effective date of this rule. For purposes of this section, Unit recertification or lease renewal is defined as the effective date of the renewed lease.

(3) After verification has occurred under paragraphs (1) or (2) of this subsection, verification does not need to be reconfirmed thereafter for a household member at subsequent Unit recertification or lease renewal if there is no change to the household members having signed the lease. Any new lease signatories at the time of subsequent Unit recertification or lease renewal must be confirmed to have qualified legal status.

(4) To the extent that a household is denied tenancy or that an existing household no longer qualifies to reside in the Unit, notification requirements as provided for in §10.613 of this title (relating to Lease Requirements), must be met. To the extent that denial of a lease or nonrenewal of a lease is based solely or in part of the SAVE response, the household must be provided adequate written notice of the denial and the information necessary to contact the Department of Homeland Security (DHS) so that the household may have the opportunity to correct their immigration records in a timely manner, if necessary, as provided for in 10 TAC §10.802 Written Policies and Procedures.

(f) Verification Process Under PRWORA.

(1) Owners must first attempt to verify the legal status of each person signing the lease using the acceptable documents and procedures described in subparagraph (A) of this paragraph. If the Owner cannot verify legal status through the acceptable documentation and verification is not satisfied under subparagraph (B) of this paragraph relating to Section 214 verification, the Owner must complete verification under paragraph (2) of this subsection.

(A) The Owner must verify the legal status of each person signing the lease by reviewing the documentation and following the documentation checklist or flowchart provided by the Department.

(B) If a household member has been verified in accordance with the screening process required by Section 214 of the Housing and Community Development Act of 1980, as amended, that verification satisfies the requirement of this section for that household member.

(2) If the Owner is unable to verify legal status for any person signing the lease through the methods described in paragraph (1) of this subsection the Owner must complete verification using one of the methods described in subparagraph (A), (B) or (C). Owners authorized to utilize the SAVE system are required to complete verification through the SAVE system as provided for in subparagraph (A) of this paragraph, except that in the case of Development Owners that are private nonprofit organizations, the Owner has the option of verification through subparagraph (A), (B) or (C) of this paragraph. If an Owner is not authorized to utilize the SAVE system, Owners must select an option under subparagraph (B) or (C) of this paragraph. Records must be maintained as required by each subparagraph of this paragraph.

(A) The Owner electing to perform the verifications through the SAVE system, and is authorized to use SAVE, in which case the Owner must maintain the SAVE case number for each person verified, complete any forms required by the Department, retain the initial SAVE response, and retain documentation of any request for additional verification and the subsequent SAVE response(s) on final result;

(B) Owner requesting that verification be performed by the Department or a party contracted by the Department. Owner must collect from the household and transmit to the Department the appropriate information and documentation using the method and system required by the Department so that the Department or its vendor can perform such verification and provide a determination to the Owner. The Owner must maintain proof of submission including the date of submission and the subsequent response or determination returned by the Department, vendor or its contracted party; or

(C) Owner electing to procure an eligible qualified organization or service to perform such verifications on its behalf, subject to Department approval. The Owner or its procured provider must maintain the SAVE case number for each person verified, complete any forms required by the Department, retain the initial SAVE response, and retain documentation of any request for additional verification and the subsequent SAVE response(s) on final result.

(D) Notification of Election of method under subparagraph (B) or (C) of this paragraph by Owners must be provided to the Department as specified in this subparagraph.

(i) For existing Developments not permitted to access the SAVE system, no later than July 1, 2026, an Owner shall submit their election under subparagraph (B) or (C) of this paragraph in writing to the Compliance division.

(ii) For newly constructed/reconstructed Developments, an Owner must make their election under subparagraph (B) or (C) of this paragraph in its Application, or if there is no Application prior to the issuance of certificates of occupancy.

(iii) For an incoming Owner, an election must be made as part of the Ownership Transfer Notification, as part of 10 TAC §10.406.

(iv) Once an election is made under this subsection it does not need to be resubmitted or reelected, but will continue from the election made in the prior year unless the Owner notifies the Department otherwise in writing at least one month prior to the implementation of the change at the Development.

(E) Owners must execute an agreement with the Department that authorizes the Development's delegation of access to the SAVE system. Owners must follow that agreement relating to providing notice to tenants about how their documentation will be used and data privacy requirements.

(g) The Department may further describe an Owner's responsibilities under PRWORA, including but not limited to use of the SAVE system, in its Contract or in further guidance. Nothing in this rule shall be construed to be a waiver, ratification, or acceptance of noncompliant administration of a program prior to the rule becoming effective.

(h) Regardless of method of verification, the results of the verification performed or received by the Owner must be utilized by the Owner in determining household eligibility.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: January 23, 2026
For further information, please call: (512) 475-3959

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SUBCHAPTER G. AFFIRMATIVE MARKETING REQUIREMENTS AND WRITTEN POLICIES AND PROCEDURE

10 TAC §10.802

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 10, Subchapter G, Section 10.802 Written Policies and Procedures without changes to the proposed text as published in the January 30, 2026 issue of the *Texas Register* (51 TexReg 501). The rule will not be republished. The purpose of the repeal is to eliminate an outdated rule and replace it simultaneously with a new rule that addresses new federal HOME regulations.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

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

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: the administration of the HOME Program.

2. The repeal does not require a change in work that creates new employee positions nor does it create savings that would allow for a reduction in employee positions.

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

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal is not considered to expand an existing regulation.

7. The repeal does not increase the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period for the rule was held January 30, 2026 to March 3, 2026, to receive input on the proposed repealed section. No comments were received on the proposed repeal of §10.802.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: January 30, 2026
For further information, please call: (512) 475-3959

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10 TAC §10.802

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 10, Subchapter G, §10.802 Written Policies and Procedures with changes to the proposed text as published in the January 30, 2026 issue of the *Texas Register* (51 TexReg 501). The rule will be republished. The purpose of the new section is to bring the rule up to date by including updates from the new federal HOME final rule and clarifying and correcting language.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because there are no additional costs associated with this action. No additional funds will be needed to implement this rule.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

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

The rule does not create or eliminate a government program but relates to changes to an existing activity: the administration of the HOME Program.

The rule does not require a change in work that creates new employee positions nor does it create savings that would allow for a reduction in employee positions.

The new section will not require additional future legislative appropriations.

The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

The new section is not creating a new regulation.

The new section does expand on an existing regulation.

The new section does not increase the number of individuals subject to the rule's applicability.

The new section will not negatively or positively affect the state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that it will not create an economic effect on small or micro-businesses or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be a rule compliant with the federal regulations for the HOME Program. There will not be economic costs to individuals required to comply with the new section.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the sections will have no economic costs.

SUMMARY OF PUBLIC COMMENT. The public comment period for the proposed new rule was held between January 30, 2026 to March 3, 2026. Written comments were accepted by email and mail. Comment was received from one commentor as follows (1) Scott A. Marks, P.C. on behalf of Foundation Communities and New Hope Housing.

Comment on the addition of language to 10.802(b)(2)(A) and 10.802(b)(2)(B):

Commentor 1 urged the Department to add language to the above referenced sections, to include "or written agreement" language to these sections to allow for preferences and limitations to be accepted by the Department, but that they not be required to be recorded in a LURA. Commentors state that in their opinion "A written agreement is all that is required by federal law and state law, and would require significantly less TDHCA staff and nonprofit staff time to prepare."

Staff Response: Federal and State law requires preferences and limitations be enforceable by both TDHCA and tenants, and TDHCA monitors development compliance through the terms of the LURA. Adding a separate "written agreement" to contain some preferences and limitations will not require less staff time to prepare because it will only be adding an additional source of enforceable obligations in addition to the required LURA obligations, and only for properties that choose to utilize such a written agreement. A new system for providing notice to TDHCA and tenants of changing preferences and limitations, adding a reference to the existing or contemplated LURA that references that a separate source for enforceable obligations exists, and allowing TDHCA to approve preferences and limitations as being legally appropriate, will need to be created in order to operationalize such a system. That said, TDHCA is agreeable to finding a solution to this concern but believes that further discussion is necessary between the Department and Commentor before a permanent change can be made to the rule. Additionally, the suggested change does not align with other places in the Texas Administrative Code and state statute where certain limitations, such as Elderly, are required to be in the LURA. Furthermore, the term "written agreement," while used federally, does not correspond with the TDHCA term Contract that is used elsewhere in the Texas Administrative Code to describe the Written Agreement required under certain federal programs. No changes to the rule are recommended at this time in response to this comment.

STATUTORY AUTHORITY. The rule action is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new section affects no other code, article, or statute.

§10.802. Written Policies and Procedures.

(a) The purpose of this section is to outline the policies and/or procedures of the Department (also called tenant section criteria) that are required to have written documentation. If an Owner fails to have such Written Policies and Procedures, or fails to follow their Written Policies and Procedures it will be handled as an Event of Noncompliance as further provided in §10.803 of this subchapter (relating to Compliance and Events of Noncompliance).

(1) Owners must inform applicants/tenants in writing, at the time of application, or at the time of other actions described in this section, that such policies/procedures as described in this section are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section and the TDHCA form based on HUD

form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation" available in the leasing office and anywhere else where applications are taken; Developments that accept electronic applications must maintain on their website these Written Policies and Procedures and the same noted forms.

(3) All policies must have an effective date. Any changes made to the policies require a new effective date, and a notice regarding the availability of new policies must be communicated to tenants in writing. Acceptable forms of notification in writing are:

(A) Written notice to each household through an active communications portal or online rental payment portal, if either are used at the Development;

(B) written notice via hard copy placed on the door to each occupied Unit;

(C) a notice online on the Development's website, if the Development has one; or

(D) a hard copy notice posted in the leasing office's public area for at least 30 calendar days.

(4) In general, policies addressing credit, criminal history, and occupancy standards cannot be applied retroactively. Tenants who already reside in the Development or applicants on the waitlist at the time new or revised tenant selection criteria are applied, and who are otherwise in good standing under the lease or waitlist, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the waitlist. However, criteria related to program eligibility may be applied retroactively when a market rate development receives a new award of tax credits, federal, or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. A Development Owner must maintain current and prior versions of the written Tenant Selection Criteria, for the longer of the records retention period that applies to the program, or for as long as tenants who were screened under the historical criteria are occupying the Development.

(1) The criteria identified by a Development must be reasonably related to an applicant's ability to perform under the lease (for a Development with MFDL funding this means to pay the rent, not to damage the housing, and not to interfere with the rights and quiet enjoyment of other tenants) and include at a minimum:

(A) Requirements that determine an applicant's basic eligibility for the Development, including any preferences, restrictions (such as the Occupancy Standard Policy), the Waitlist Policy, Changes in Housing Designation Policy, low income unit designations utilized, and any other tenancy requirements. Any restrictions on student occupancy and any exceptions to those restrictions, as documented in the tenant file as provided for in 10 TAC §10.612(b)(2) of this chapter (relating to Tenant File Requirements) must be stated in the policies;

(B) Applicant screening criteria, including what applicant attributes are screened and what scores or findings would result in ineligibility;

(C) The following statement: Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and TDHCA's rules;

(D) Specific age requirements if the Development is operating as an Elderly Property either under the Housing for Older Persons Act of 1995 as amended (HOPA), or the age related eligibly criteria required by its use of federal funds.

(2) The criteria must not:

(A) Include preferences for admission, unless it is in a recorded LURA which has been approved by the Department (preferences are required to be in a LURA when a Development has federal or state funding, except for the preference allowed by paragraph (3) of this subsection), is required by a program in which the Owner is participating which requires the preference, or is allowed by paragraph (3) of this subsection. Owners that include preferences in their leasing criteria due to other federal financing must provide to the Department either written approval from HUD, USDA, or VA for such preference, or identify the statute, written agreement, or federal guidance documentation that permits the adoption of this preference;

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or $2,500 annually; or

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(3) If the Development is funded with HOME, HOME ARP, TCAP RF, NHTF, or NSP funds, in accordance with 24 CFR §93.356 and 24 CFR §92.359, the criteria may have a preference for persons who have experienced domestic violence, dating violence, sexual assault, or stalking.

(4) Occupancy Standard Policy.

(A) If the Development restricts the number of occupants in a Unit in a more restrictive manner than found in Section 92.010 of the Texas Property Code, the Occupancy Standard Policy must allow at least two persons per Bedroom plus one additional person per Unit. An Efficiency Unit that is greater than 600 square feet, must also have an Occupancy Standard Policy of at least three persons per Unit. In an SRO or in an Efficiency that is less than 600 square feet, the Occupancy Standard Policy must allow at least two persons per Unit. Supportive housing or transitional housing Developments where all Units in the Development are SROs or Efficiencies, are not required by the Department to have an Occupancy Standard Policy, except as required for the 811 PRA Program or as reflected in the Development's LURA.

(B) A Development may adopt a more restrictive standard than described in subparagraph (A) of this paragraph, if the Development is required to utilize a more restrictive standard by a local governmental entity, or a federal funding source. However, the Development must have this information available onsite for Department review.

(C) Except for an Elderly Development that meets the requirements of the Housing for Older Persons Act exception under the Fair Housing Act, the Occupancy Standard Policy must state that children that join the household after the start of a lease term will not cause a household to be in violation of the lease.

(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(1) The policy must provide:

(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation;

(B) How transfers related to a reasonable accommodation will be addressed; and

(C) A timeframe in which the Owner will respond to a request that is compliant with §1.204(b)(3) and (d) of this title (relating to Reasonable Accommodations).

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household whose need is readily apparent to provide third party documentation of a disability;

(C) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation;

(D) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or

(E) Require a household to rent a unit that has already been made accessible.

(d) Waitlist Policy. Owners must maintain a written waitlist policy, regardless of current Unit availability. The policy must be maintained at the Development. The policy must include procedures the Development uses in:

(1) Opening, closing, and selecting applicants from the waitlist, including but not limited to the requirements in §10.615(b) of this title (relating to Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments);

(2) Determining how lawful preferences are applied; and

(3) Procedures for prioritizing applicants needing accessible Units in accordance with 24 CFR §8.27, and Chapter 1, Subchapter B of this title (relating to Accessibility and Reasonable Accommodations).

(e) Changes in Household Designation Policy. This is applicable if a Development has adopted a policy in accordance with §10.611(c) of this subchapter (relating to Determination, Documentation and Certification of Annual Income).

(f) Denied Application Policies. Owners must maintain a written policy regarding the procedures they will follow when denying an application and when notifying denied applicants of their rights.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(2) Within seven days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:

(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based;

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. An appeals procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and Units at Developments that lease Units under the Department's Section 811 PRA program. The appeals process must provide a 14-day period for the applicant to contest the reason for the denial, and comply with other requirements of the HUD Handbook 4350.3 4-9; and

(C) The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

(3) The Development must keep and may periodically be requested to submit to the Department a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process; and

(B) The specific reason for which an applicant was denied.

(4) If an 811 applicant is being denied, within three calendar days of the denial the Department's 811 PRA Program point of contact must be notified and provided with a copy of the written notice that was provided to the applicant.

(g) Non-renewal and/or Termination Notices. A Development Owner must maintain a written policy regarding procedures for providing households non-renewal and termination notices.

(1) The Owner must provide in any non-renewal or termination notice, a specific and lawful reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules and the lease. For HOME, HOME ARP, TCAP RF, NHTF, NSP, HTC, TCAP, ERA, and Exchange Developments, see 10 TAC §10.613(a) - (b) of this chapter (relating to Lease Requirements). For Section 811 PRA, see 24 CFR §247.4(a) - (f);

(B) Include the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted;

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice;

(D) Include information on the appeals process if one is used by the Development (this process is required under some LURAs, for HOME Developments that are owned or sponsored by Community Housing Development Organizations, and for 811 PRA units); and

(E) For Units subject to the 2025 HOME Final Rule as identified in §10.601(g), of this chapter relating to 2025 HOME Final Rule applicability,

(i) Such notice should be provided in a translated format when needed to ensure meaningful access for limited English proficient (LEP) persons; and

(ii) Be provided to TDHCA within the timeframe identified in §10.613(o)(4) if this chapter, relating to Notices to Vacate.

(h) At the time of application Owners must provide each adult in the household the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted.

(i) Policies and procedures will be reviewed periodically by the Department's Fair Housing staff, as a result of complaints, or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to fair.housing@tdhca.state.tx.us. After review by the Department, an Owner may make non-substantive changes to the policies.

(j) A Development Owner must allow applicants to submit applications via mail and at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. The Development's tenant selection criteria must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria.

(k) If the Development has ever been funded via Direct Loan or has HOME Match units, the Development's written policies and procedures must list at least two methods to contact the Development.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 10, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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CHAPTER 13. MULTIFAMILY DIRECT LOAN RULE

10 TAC §§13.1 - 13.13

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§13.1 - 13.13 without changes to the proposed text as published in the January 30, 2026 issue of the *Texas Register* (51 TexReg 506). The rule will not be republished. The purpose of the repeal is to provide for clarification of the existing rule through new rulemaking action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

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

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

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be increased clarity and improved access to the Multifamily Direct Loan funds. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from January 30, 2026, to March 3, 2026, to receive input on the proposed repealed section. No comments on the repeal were received.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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10 TAC §§13.1 - 13.13

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§13.1 - 13.3, 13.7, and 13.10, without changes to the proposed text as published in the January 30, 2026 issue of the *Texas Register* (51 TexReg 507). These rules will not be republished. Sections 13.4 - 13.6, 13.8, 13.9 and 13.11 - 13.13 are adopted with changes. These rules will be republished. The purpose of the new sections is to provide compliance with Tex. Gov't Code §2306.111 and to update the rule to: clarify program requirements in multiple sections, codify in rule practices of the division, and change citations to align with changes to other multifamily rules. In general, most changes are corrective in nature, intended to gain consistency with state or federal rules, delete duplicative language or provisions, correct or update rule references, and clarify language or processes to more adequately communicate the language or process.

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

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Multifamily Direct Loan Program.

2. The new rule does not require a change in work that would require the creation of new employee positions nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The rule changes do not require additional future legislative appropriations.

4. The rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not expand, limit, or repeal an existing regulation.

7. The rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.111.

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

2. This rule relates to the procedures for multifamily direct loan applications and award through various Department fund sources. Other than in the case of a small or micro-business that is an applicant for such a loan product, no small or micro-businesses are subject to the rule. It is estimated that approximately 200 small or micro-businesses are such applicants; for those entities the new rule provides for a more clear, transparent process for applying for funds and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the rule because this rule is applicable only to direct loan applicants for development of properties, which are not generally municipalities. The fee for applying for a Multifamily Direct Loan product is $1,000, unless the Applicant is a nonprofit that provides supportive services or the Applicant is applying for Housing Tax Credits in conjunction with Multifamily Direct Loan funds, in which case the application fee may be waived. These fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing.

There are 1,363 rural communities potentially subject to the rule for which the economic impact of the rule is projected to be $0. 10 TAC Chapter 13 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for MFDL resources that are located in rural areas is approximately fifteen. In those cases, a rural community securing a loan will experience an economic benefit, including, potentially, increased property tax revenue from a multifamily Development.

3. The Department has determined that because there are rural MFDL awardees, this program helps promote construction ac-

tivities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive MFDL awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rule does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule may provide a possible positive economic effect on local employment in association with this rule since MFDL Developments, layered with housing tax credits, often involve a typical minimum investment of $10 million in capital, and more commonly an investment from $20 million to $30 million. Such a capital investment has direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until MFDL awards and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that significant construction activity is associated with any MFDL Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive MFDL awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be improved clarity of program requirements in multiple sections, codification in rule practices of the division, and change citations to align with changes to other multifamily rules. There will not be any economic cost to any individuals required to comply with the new sections because this rule does not have any new requirements that would cause additional costs to applicants.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because it does not have any new requirements that would cause additional costs to applicants.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from January 30, 2026, to March 3, 2026, to receive input on the proposed new sections. No comment was received.

STATUTORY AUTHORITY. The new is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new sections affect no other code, article, or statute.

§13.4. Set-Asides, Regional Allocation, and NOFA Priorities.

(a) Set-Asides. Specific types of Activities or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in categories called Set-Asides. Not all Set-Asides will be available in every NOFA, and the Board may approve Set-Asides not described in this section. The amount of a single award may be credited to multiple Set-Asides, in which case the credited portion of funds may be repositioned into an oversubscribed Set-Aside prior to a defined collapse deadline. Applications under any and all Set-Asides may or may not be layered with other Department Multifamily programs except as provided in this section or as determined by the Board to address unique circumstances not addressed by these rules.

(1) General / Soft Repayment Set-Aside.

(A) Applicants seeking to qualify for NHTF under this set-aside must propose Developments in which all Units assisted with MFDL funds are available for households earning the greater of the poverty rate or 30% AMI, and have rents no higher than the rent limits for extremely low-income tenants in 24 CFR §93.302(b).

(B) Applicants seeking to qualify for HOME under this set-aside must propose Developments in which all Units assisted with MFDL funds are available to households earning no more than 80% AMI and have rents no higher than the rent limits under 24 CFR §92.2.

(C) A portion of the General / Soft Repayment Set-Aside may be reallocated into the CHDO Set-Aside in order to fully fund a CHDO award that exceeds the remaining amount in the CHDO Set-Aside.

(2) CHDO Set-Aside. Unless waived or reduced by HUD, a portion of the Department's annual HOME allocation will be set aside for eligible CHDOs meeting the requirements of the definition of Community Housing Development Organization in 24 CFR §92.2 and 10 TAC §13.2(2) of this chapter (relating to Definitions). Applicants under the CHDO Set-Aside must be proposing to develop housing on Development Sites located outside Participating Jurisdictions (PJ), unless the award is made within a Persons with Disabilities (PWD) Set-Aside, or the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor. A grant for CHDO operating expenses may be awarded in conjunction with an award of MFDL funds under this Set-Aside, if no other CHDO operating grants have been awarded to the Applicant in the same Calendar year, in accordance with 24 CFR §92.208. Applications under the CHDO Set-Aside may not have a for-profit special limited partner within the ownership organization chart.

(b) Regional Allocation and Collapse. All funds subject to Tex. Gov't Code §2306.111 or as described to HUD in planning documents will be allocated to regions and potentially subregions based on a Regional Allocation Formula (RAF) within the applicable Set-Asides (unless the funds have already been through a RAF of the annual NOFA and/or Special Purpose NOFA). The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date and Application Acceptance Date for the regionally allocated funds will be identified in the NOFA but in no instance shall it be less than 30 days from the date a link to the Board approved NOFA or NOFA Amendment is published on the Department's website.

(1) After funds have been made available regionally and the period for regional allocation has expired, remaining funds within

each respective Set-Aside may collapse and be pooled together on a date identified in the NOFA. All Applications received prior to these collapse dates will continue to hold their priority unless they are withdrawn, terminated, suspended, or funded.

(2) Funds remaining after expiration of the Set-Asides on the end date identified in the NOFA, which have not been requested in the form of a complete Application, may be collapsed and pooled together to be made available statewide on a first-come first-served basis to Applications submitted after the collapse dates, as further described in the NOFA.

(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an Application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board, and reflected in the NOFA.

(c) Notice of Funding Availability (NOFA). MFDL funds will be distributed pursuant to the terms of a published NOFA that provides the specific collapse dates and deadlines as well as Set-Aside and RAF amounts applicable to each NOFA, along with scoring criteria, priorities, award limits, and other Application information. Set-asides, RAFs, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as authorized by the Board.

§13.5. Application and Award Process.

(a) Applications. MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 11, Subchapter C (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) and the Notice of Funding Availability for which the Application is submitted.

(b) Application Acceptance Date. Applications will be considered received on the business day of receipt, unless a different time period is described in the Department's rules or NOFA. If an Application is received after 5:00 p.m., Austin local time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all Application materials, required third party reports and application fee(s) are received by the Department. Within certain Set-Asides or priorities, the date of receipt may be fixed, regardless of the earlier actual date a complete Application is received, if so specified in the Department's rules or NOFA. If multiple Applications have the same Application Acceptance Date, in the same region or subregion (as applicable), within the same Set-Aside, and for 9%, then score and tiebreaker factors, as described in 10 TAC §11.7 of this title (relating to Tie Breaker Factors) will be used to determine the Application's rank, unless another priority is described in the NOFA.

(c) Market Analysis. Applications proposing Rehabilitation that request MFDL as the only source of Department funding may be exempted from the Market Analysis requirement in 10 TAC §11.205(2) (relating to Required Third Party Reports) if the Development's rent rolls for the most recent six months reflect occupancy of at least 80% of all Units.

(d) Required Site Control Agreement Provisions. All Applicants for MFDL funds must include the following provisions in the purchase contract or site control agreement if the subject property is not already owned by the Applicant:

(1) "Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that: (A) It has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (i) the purchase may proceed, or (ii) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (B) It has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required."; and

(2) "The Buyer does not have the power of eminent domain relating to the purchase and acquisition of the Property. The Buyer may use federal funds from the U.S. Department of Housing and Urban Development (HUD) to complete this purchase. HUD will not use eminent domain authority to condemn the Property. All parties entered this transaction voluntarily and the Buyer has notified the Seller of what it believes the value of the Property to be in accordance with 49 CFR Part 24 Appendix A. If negotiations between both parties fail, Buyer will not take further action to acquire the Property."

(e) Oversubscribed Funds for Competitive HTC-Layered Applications. Should MFDL funds be oversubscribed in a Set-Aside or for a fund source that has geographic limitations within a Set-Aside, Applications concurrently requesting Competitive HTC will be notified and may amend their Application to accommodate another fund source and make changes that still meet threshold requirements in 10 TAC Chapters 11 and 13 of this title, if such changes do not impact scoring under 10 TAC §11.9 (relating to Competitive HTC Selection Criteria). The Department will provide notice to all impacted Applicants in the case of oversubscription, which will include a deadline by which the Applicant must respond to the Department. Multiple Applications from a single or affiliated Applicants do not constitute oversubscription, and the Applicant(s) will not be able to amend their Applications as described in this subsection. If MFDL funds become available between the Market Analysis Delivery Date, and the date of the Department's Board meeting at which final Competitive HTC awards are made, the MFDL funds will not be reserved for Competitive HTC-layered Applications, unless the reservation is described in the NOFA.

(f) Availability of funds for Non-Competitive HTC-layered Applications. If an Application requesting layered Non-Competitive HTC and Direct Loan funds is terminated under 10 TAC §11.201(2)(E) (relating to Withdrawal of Certificate of Reservation), the Application will receive a new Application Acceptance Date for purposes of Direct Loan funds upon submission to the Department of the new Certificate of Reservation if the Board has not made an award. Direct Loan funds will not be reserved for terminated Applications, and may not be available for the Application with a new Reservation.

(g) Eligibility Criteria and Determinations.

(1) The Department will evaluate Applications received under a NOFA for eligibility and threshold pursuant to the requirements of this chapter and Chapter 11 of this title (relating to the Qualified Allocation Plan). The Department may terminate the Application if there are changes at any point prior to MFDL loan closing that would have had an adverse effect on the score and ranking order of the Application that would have resulted in the Application not being recommended for an award or being ranked below another Application received prior to the subject Application.

(2) Applicants requesting MFDL as the only source of Department funds must be able to demonstrate that a Principal of the Developer, Development Owner, or General Partner has previously developed and placed into service a minimum of 50 multifamily housing units. It is the Applicant's responsibility to identify and submit sufficient evidence of this experience in the Application. If the Department determines that the evidence submitted is not substantial, ad-

ditional evidence may be submitted through the Administrative Deficiency process, if it is available. If the Applicant is unable to provide satisfactory evidence, the Applicant will be ineligible for funding.

(h) Effective rules and contractual terms. The contractual terms of an award will be governed by and reflect the rules in effect at the time of Application; however, any changes in federal requirements will be reflected in the contractual terms. Further provided that, if after award, but prior to execution of such Contract, there are new rules in effect, the Direct Loan awardee may elect to be governed by the new rules, provided the Application would continue to have been eligible for award under the rules and NOFA in effect at the time of Application.

§13.6. Scoring Criteria and Tie Breaker Factors.

(a) Scoring. The scoring items used to calculate the score for a Competitive HTC-Layered Application will be utilized for scoring for an MFDL Application, and evaluated in the same manner. For all other Applications, the Tie Breaker described below will be utilized to determine which Applications to recommend for an award if multiple Applications are given the same Application Acceptance Date within the same Set-Aside and with the same Priority as described in the NOFA.

(b) Tie Breaker. In the event that two or more Applications receive the same Application Acceptance Date, within the same Set-Aside and having the same Priority, staff will utilize the Tie Breaker Factors established in §11.7 of this title (relating to Tie Breaker Factors), unless another tie-breaker is described in the NOFA.

§13.8 Loan Structure and Underwriting Requirements.

(a) Loan Structures. Loan structures must meet the criteria described in this section and as further described in a NOFA. The interest rate, amortization period, and term for the loan will be approved by the Board at the time of award, and can only be amended prior to loan closing by the process in 10 TAC §13.12 (relating to Pre-Closing Amendments to Direct Loan Terms).

(b) Criteria for Construction-to-Permanent Loans. Direct Loans awarded through the Department must adhere to the criteria as identified in paragraphs (1) - (7) of this subsection if being requested as construction-to-permanent loans, for which the interest rate will be specified in the NOFA and approved by the Board:

(1) The construction term for MFDL loans shall generally be coterminous with any superior construction loans, but no greater than 36 months. In the event the MFDL loan is the only loan with a construction term or is the superior construction loan, the construction term may be up to 36 months. Shorter timeframes may be required to meet federal project completion or expenditure deadlines;

(2) No interest will accrue during the construction term; the Department may extend the Development Period without extending the construction term if the first lien permanent lender does not extend its loan term, or if the Development Period is approved by the Board to be over 36 months;

(3) The loan term shall be no less than 15 years and no greater than 40 years, and the amortization period shall be between 30 to 40 years. The Department's loan must mature at the same time or within six months of the shortest term of any senior debt, so long as neither exceeds 40 years. The permanent loan term generally commences following the end of the construction term;

(4) Loans shall be secured with a deed of trust with a lien position, and for loans with monthly or annual payment provisions, a repayment position that is superior to any other sources for financing including hard repayment debt that is in an amount less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing notes, have deferred forgivable provisions, or in which the lender has an identity of interest with any member of the Development Team. Parity liens may only be considered with federal loan funds from USDA Rural Development;

(5) In general, up to 50% of the MFDL loan may be advanced at loan closing, should there be sufficient eligible costs to reimburse that amount; however, this amount may be proportionally exceeded for a Development being awarded additional MFDL funds, if the Development is past 50% at loan closing, so long as the required Mid-Construction Inspection has been completed. In all cases, at least 10% of the funds will be reserved for the final Draw. Requests for funding at loan closing must be received by the Department at least 45 days prior to the closing.

(c) Criteria for Construction Only Loans. MFDL Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (2) of this subsection if being requested as construction only loans:

(1) The term of the construction loan shall generally be coterminous with any superior construction loan(s), but no greater than 36 months. In the event that the MFDL loan is the only construction loan or is the superior construction loan, the term may not exceed 36 months. Shorter timeframes may be required to meet federal project completion or expenditure deadlines; and

(2) Loans shall be secured with a deed of trust that is superior to any other sources for financing, including hard repayment debt that is in an amount less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing notes, have deferred forgivable provisions, or in which the lender has an identity of interest with any member of the Development Team.

(d) Criteria for Permanent Refinance Loans. If 90% of the Department's loan will repay existing debt, the first payment will be due the month after the month of loan closing; 90% of the loan may be advanced at loan closing, unless the Board approves another date.

(e) Evaluations. All Direct Loan Applicants in which third-party financing entities are part of the sources of funding must include a pro forma and lender approval letter evidencing review of the Development and the Principals, as described in 10 TAC §11.9(f)(1) of this title (relating to Competitive HTC Selection Criteria). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the Applicant.

(f) Pass-Through Loans. Department funds may not be used as pass-through financing. The Department's Borrower must be the Development Owner.

§13.9. Construction Standards.

All Developments financed with Direct Loans will be required to meet at a minimum the applicable requirements in Chapter 11 of this title (relating to the Qualified Allocation Plan). In addition, Developments must meet all applicable state and local codes, ordinances, and standards; the 2021 International Existing Building Code (IEBC) or International Building Code (IBC), as applicable. Should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC or IBC, as applicable. Developments must also meet the requirements in paragraphs (1) - (5) of this section:

(1) Third-Party Recommendations. Recommendations made in the Environmental Site Assessment (§11.305 of this title (relating to Environmental Site Assessment Rules and Guidelines)) and any Scope of Work and Cost Review (§11.306 of this title (relating

to Scope and Cost Review Guidelines) with respect to health and safety issues, life expectancy of major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented;

(2) Lead and Asbestos Testing. For properties originally constructed prior to 1978, the Scope of Work and Cost Review must be provided to the party conducting the lead-based paint and/or asbestos testing, and the Development Owner must implement the mitigation recommendations of the testing report;

(3) Broadband Infrastructure. The broadband infrastructure requirements described in 24 CFR §92.251(a)(2)(vi) or (b)(1)(x) for HOME, NSP, or TCAP RF; or 24 CFR §93.301(a)(2)(vi) or 24 CFR §93.301(b)(2)(vi) for NHTF, as applicable;

(4) Properties in Catastrophe Areas. Developments located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4012 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After April 1, 2020); and

(5) Minimum Construction Standards. Rehabilitation Developments funded with federal sources may also be required to meet Minimum Rehabilitation Standards, as required by HUD. Rehabilitation Developments funded by the National Housing Trust Fund are required to meet the Multifamily Minimum Rehabilitation Standards approved by HUD, as posted on the Department's website at https://www.tdhca.state.tx.us/multifamily/home/index.htm, in addition to the Department's rules and NOFA requirements.

§13.11. Post-Award Requirements.

(a) Direct Loan awardees must satisfactorily complete the Post-Award Requirements identified in this section after the Board approval date.

(b) If a Direct Loan award is declined by the Direct Loan awardee and returned after Board approval, or if the Direct Loan awardee or Affiliates fail to timely enter into the Contract, close the loan, begin and complete construction, or leave a portion of the Direct Loan award unexpended, penalties may apply under 10 TAC §11.9(f) (relating to Competitive HTC Selection Criteria), and/or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of two years.

(c) Benchmarks. Extensions to the benchmarks in paragraphs (1) - (8) of this subsection may only be approved by the Executive Director or authorized designee in accordance with §13.12 or §13.13 of this chapter (relating to Pre-Closing and Post-Closing Amendments), as applicable.

(1) Environmental Clearance. In order to obtain environmental clearance required by the National Environmental Policy Act (NEPA) and other related Federal and state environmental laws (if applicable), Direct Loan Applicants, including those previously awarded HTC, must submit a fully completed environmental review, including any applicable reports to the Department within 90 days of the Application Acceptance Date. This includes required environmental clearance for FHA and HUD funding. If the NOFA is still open, a new Application Acceptance Date may be given if this Benchmark is not met.

(2) Contract Execution. After a Development receives environmental clearance (if applicable), the Department will draft a Contract to be emailed to the Direct Loan awardee. Direct Loan awardees must execute and return a Contract to the Department within 30 calendar days after receipt of the Contract or the Department may terminate the award.

(3) Loan Closing and Construction Commencement. Loan closing must occur and construction must begin on or before the dates described in the Contract. If construction has not commenced within 12 months of the Contract Effective Date, the award may be terminated.

(4) Loan Closing. In preparation for closing any Direct Loan, the Development Owner must submit the items described in subparagraphs (A) - (F) of this paragraph. Providing incomplete documents, or not responding timely to subsequent Department requests for materials needed to facilitate closing, may significantly delay closing. Any request to change the financing structure of the Development, or the ownership structure, will in most cases extend the amount of time it will take for the Department to meet closing timelines, and may move prioritization of the closing below that of other Developments.

(A) Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development.

(B) Due diligence items determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department, as requested by Staff.

(C) When Department funds have a first lien position during the construction term, or if the Development is a public work under state law, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract or equivalent guarantee as allowable under state law in the sole determination of the Department is required. Development Owners utilizing the USDA §515 program for a Development that is not a public work are exempt from this requirement, but must meet the alternative requirements set forth by USDA.

(D) Documentation required for preparation of closing loan documents includes, but is not limited to:

(i) Substantially final information necessary for REA staff to reevaluate the transaction prior to loan closing, including but not limited to a substantially final development cost schedule, sources and uses, operating pro forma, annual operating expenses, rent schedule, updated written financial commitments or term sheets, and any additional financing exhibits that have changed since the time of Application;

(ii) Substantially final Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

(iii) Survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(iv) Plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that is intended to assist in identifying early concerns associated with the Department's final construction requirements; and

(v) If layered with Housing Tax Credits, a substantially final draft limited partnership agreement between the General Partner and the tax credit investor entity.

(E) If required by the fund source, prior to Contract Execution unless an earlier period is described in Chapters 10, 11, or 12 of this title, the Development Owner must provide verification of:

(i) Environmental clearance from the Department or HUD, as applicable;

(ii) Site and Neighborhood clearance from the Department;

(iii) Documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply;

(iv) Title Insurance Commitment or Policy showing the Department as Lender, with copies of all Schedule B documents; and

(v) Any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(F) The Direct Loan Contract as executed, which will be drafted by the Department's counsel or its designee for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division or its designee.

(5) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in the form and substance acceptable to the Department's Legal Division.

(A) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Underwriting Report and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents. Additional loan terms and conditions may be imposed by the loan closing documents.

(B) Loan terms and conditions may vary based on the type of Development, Real Estate Analysis Underwriting Report, and the Set-Aside under which the award was made.

(6) Quarterly Construction Status Reports. The Development Owner is required to submit quarterly Construction Status Reports to the Asset Management Division as described and by the deadlines specified in 10 TAC §10.401(e) of this title (relating to Construction Status Report).

(7) Mid-Construction Development Inspection Letter. In addition to any other obligations required as the result of any other Department funding sources, the Development Owner must submit a Mid-Construction Development Inspection Request once the Development has met at least 25% construction completion as indicated on the G703 Continuation Sheet or HUD equivalent form. Department inspection staff will issue a Mid-Construction Development Inspection Letter that confirms work is being done in accordance with the applicable codes, the construction contract, and construction documents.

(8) Construction Completion. Construction must be completed, as reflected by the Development's certificate(s) of occupancy (if new construction and/or reconstruction) and Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 for instances in which a federally insured HUD loan is being utilized, within the construction term of any superior construction loan(s) or up to 36 months of the actual loan closing date if no superior construction loan(s) exists, unless a shorter timeline is necessitated by the federal funding source.

(9) Closed Final Development Inspection Letter. The Closed Final Development Inspection Letter must be issued by the Department within 36 months of loan closing, unless a shorter timeline is necessitated by the federal funding source. This letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements; this letter may include deficiencies that require resolution. The Closed Final Development Inspection may be conducted concurrently with a NSPIRE inspection. However, any letters associated with an NSPIRE inspection will not satisfy the Closed Final Development Inspection Letter required by this subsection.

(10) Initial Occupancy. Initial occupancy and for floating Units designation of NHTF Units by and for eligible households shall occur within 120 days, or for all other MFDL assisted Units or HOME Match Units, within six months of the final Direct Loan draw. Requests to extend the initial occupancy period must be accompanied by documentation of marketing efforts and a marketing plan. The marketing plan may be submitted to HUD for final approval, if required by the MFDL fund source.

(11) Per Unit Repayment. Repayment may be required on a per Unit basis for Units that have not been rented to eligible households within 120 days or 18 months of the final Direct Loan draw, depending on the fund source.

(12) Termination and Repayment for Failure to Complete. Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four years of the effective date of a Direct Loan Contract.

(13) Disbursement of Funds. The Borrower must comply with the requirements in subparagraphs (A) - (K) of this paragraph in order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements is required with a request for disbursement:

(A) All requests for disbursement must be submitted using the MFDL draw workbook or such other format as the Department may require;

(B) Documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702/G703 or HUD equivalent form;

(C) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702 or HUD equivalent form. For release of retainage, the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least 30 calendar days after the date of the completion as certified on the Certificate of Substantial Completion (AIA Form G704) with $0 as the work remaining to be completed. If AIA Form G704 or HUD equivalent form indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed. Disbursement requests for acquisition and closing costs are exempt from this requirement;

(D) Table Funding (the wiring of Direct Loan funds to the title company at loan closing) may be permitted at the time of closing, for disbursement of funds related to eligible acquisition costs and eligible soft costs incurred, and in an amount not to exceed 50% of the total funds. Table Funding must be requested in writing at least 30 calendar days prior to the anticipated closing date, and will not be considered unless the Direct Loan Contract has been executed and all necessary documentation has been submitted to and accepted by the

Department at least 10 calendar days prior to the anticipated closing date;

(E) At least 50% of Direct Loan funds (except as otherwise allowed for Permanent Refinance Loans described in 10 TAC §13.8(e) (relating to Loan Structure and Underwriting Requirements)) will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;

(F) The initial draw request for the Development (excluding Table Funding) must be entered into the Department's Housing Contract System no later than 180 days after loan closing;

(G) Developer Fee disbursement shall be limited by subparagraph (I) of this paragraph and is further conditioned upon clauses (i) - (iii) of this subparagraph, as applicable:

(i) For Developments in which the loan is secured by a first lien deed of trust against the Property, 75% shall be disbursed in accordance with percent of construction completed. 75% of the total allowable fee will be multiplied by the percent completion, as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25% shall be disbursed at the time of release of retainage; or

(ii) For Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, Developer Fees will not be reimbursed by the Department, except as follows. If all other lenders and the syndicator in a Housing Tax Credit Development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of Developer Fees and expect that Department funds shall be used to fund Developer Fees, they shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(iii) The Department may reasonably withhold any disbursement in accordance with the Loan Documents and if it is determined that the Development is not progressing as reasonably necessary to meet the benchmarks for the timely completion of construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If disbursement is withheld for any reason, disbursement of any remaining Developer Fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met;

(H) Expenditures must be allowable and reasonable in accordance with federal and state rules and regulations. The Department shall review each expenditure requested for reasonableness. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(I) Following 50% construction completion, any funds will be released in accordance with the percentage of construction completion as documented on AIA Form G702/703 or HUD equivalent form. 10% of requested Hard Costs will be retained and will not be released until the final draw request. If the Development is receiving funds from more than one MFDL source, the retainage requirement will apply to each fund source individually.

(J) All of the items described in clauses (i) - (ix) of this subparagraph are required in order to approve the final draw request. The Executive Director or authorized designee may for good cause allow for the final draw to be released prior to the receipt of the items unless prohibited by state or federal statute. Such allowances are not guaranteed:

(i) Fully executed Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 (for instances in which a federally insured HUD loan is being utilized) with $0 as the cost estimate of work that is incomplete. If AIA Form G704 or Form HUD-92485 indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed;

(ii) A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485;

(iii) For Developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;

(iv) For NHTF Developments layered with HTCs, a separate, additional cost certification form completed by an independent, licensed, certified public accountant of all Development costs (including project costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract, commonly known as a cost certification;

(v) For Developments subject to the Davis-Bacon Act, written documentation that the Department's Notice to Proceed was sent and final wage compliance report was received and approved, or confirmation that HUD or other entity maintains Davis-Bacon oversight;

(vi) Certificate(s) of Occupancy (for New Construction or Reconstruction Units);

(vii) Development completion reports, which includes, but is not limited to, documentation of full compliance with the Uniform Relocation Act/104(d), Match Documentation requirements, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement;

(viii) If applicable to the Development, certification from Architect or a licensed engineer that all HUD environmental mitigation conditions have been met; and

(ix) evidence of Match being credited to the Development.

(K) No disbursement of funds will be approved without receipt of all closing documents in the form and substance required by the Department's Legal Division;

(L) The final draw request must be submitted within the Development Period;

(M) Annually, Borrowers must submit at least one draw, and may not submit more than four draws, unless previously approved by the Executive Director or designee for good cause; and

(N) If allowed by NOFA, requests for draws to be disbursed at the time of closing (i.e., table funding) must be received by the Department at least 45 days prior to the closing of the MFDL loan.

(14) Annual Audits and Cost Certifications under 24 CFR §93.406(b).

(A) Annual Audits under 24 CFR §93.406(b). Unless otherwise directed by the Department, the Development Owner shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under the Direct Loan Contract, subject to the conditions and limitations set forth in the executed Direct Loan Contract. All approved audit reports will be made available for public inspection within 30 days after completion of the audit.

(B) Cost Certifications under 24 CFR §93.406(b).

(i) Non-HTC-Layered Developments. Within 180 calendar days of the later of all title transfer requirements and construction work having been performed, as reflected by the Development's Certificate(s) of Occupancy (if New Construction) or Certificate of Substantial Completion (AIA Form G704 or HUD equivalent form), or when all modifications required as a result of the Department's Final Construction Inspection are cleared as evidenced by receipt of the Closed Final Development Inspection Letter, the Development Owner will submit to the Department a cost certification done by an independent licensed certified public accountant of all Development costs (including project NHTF eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

(ii) HTC-Layered Developments. With the Cost Certification required by the Low Income Housing Tax Credit Program, the Development Owner must submit to the Department a cost certification completed by an independent licensed certified public accountant of all Development costs (including NHTF project eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

§13.12. Pre-Closing Amendments to Direct Loan Terms.

(a) Closing Memo to Underwriting Report. Any changes to the total development cost, expenses, income, and/or other sources of funds from time of the publication of the initial Underwriting Report at the time of award to the time of loan closing, if the type or amount of the sources and uses have changed, must be reevaluated by the Real Estate Analysis division, which will typically publish a Closing Memo to the Underwriting Report. The Report may recommend changes to the principal amount and/or the repayment structure for the Multifamily Direct Loan pursuant to §11.302 of this title (relating to Underwriting Rules and Guidelines), except that the change must have been an available option in the rule or NOFA (as applicable), and may not be made to awards that were competitively scored to the extent that change would have caused the Development to lose points. This will allow the Department to uphold the competitive process, mitigate any increased risk, and to ensure that the Development is not oversubsidized. Where the Department determines such risk is not adequately mitigated, the award may be terminated or reconsidered by the Board. If the changes cause the total Debt Coverage Ratio (DCR) to no longer comply with 10 TAC §11.302 of this title, the award may be subject to termination. The Department may require the Closing Memo to be completed before providing a Contract to the Development Owner.

(b) Executive Approval Required Pre-Closing. The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection. Under no circumstances may an amendment cause the Department to violate or be at risk of violating a federal requirement or deadline.

(1) Extensions to the loan closing date required in 10 TAC §13.11(c)(4) of this chapter (relating to Post-Award Requirements) may be approved prior to closing. An Applicant must submit sufficient evidence documenting good cause, including but not limited to, documented delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple fund source closing.

(2) Changes to the construction term and/or loan maturity date to accommodate the requirements of other lenders or to maintain parity of term may be approved prior to closing.

(3) Extensions to the Construction Completion date or date of receipt of a Closed Final Development Inspection Letter required in 10 TAC §13.11(c)(10) of this chapter may be requested but generally are not approved prior to initial loan closing. Extensions under this paragraph are determined based on documentation that the extension is necessary to complete construction and that there is good cause for the extension.

(4) Only to the extent determined necessary by Real Estate Analysis to maintain financial feasibility, changes to the amortization period (not to exceed 40 years) or interest rate (to not less than the minimum specified in rule or NOFA) may be approved if such changes continue to meet all requirements of Chapter 11, Chapter 13, and the NOFA.

(5) Decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development in the determination of Real Estate Analysis may be approved prior to closing, though the Development Owner may be subject to penalties as further described in 10 TAC §13.11 of this chapter (relating to Post-Award Requirements). Increases will not generally be approved unless the Applicant applies for the additional funding under an open NOFA.

(6) Changes to other loan terms or requirements that would not require a waiver, as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(c) Board Approval Required Pre-Closing. Board approval is necessary for any other changes prior to closing.

§13.13. Post-Closing Amendments to Direct Loan Terms.

(a) Good Cause Extensions. The Executive Director or authorized designee may approve extensions under 10 TAC §13.11(c)(1) - (8) of this chapter (relating to based on documentation that there is good cause for the extension and the extension would not cause the Department to violate or be at risk of violating a federal requirement or deadline.

(b) Amendments to MFDL Awards. Except in cases of Force Majeure, changes to terms of awards subject to mandatory HUD reporting requirements will only be processed after the Construction Completion is reported to the federal oversight entity as completed, and the last of the MFDL funds have been drawn.

(c) Executive Amendments. The Executive Director or authorized designee may approve amendments to loan terms post-closing as described in paragraphs (1) - (3) of this subsection. Board approval is necessary for any other changes post-closing.

(1) Changes in Terms. Changes to the amortization or maturity date to accommodate the requirements of other lenders or maintain parity of term may be approved post-closing, provided the changes result in the Direct Loan continuing to meet the requirements of 10 TAC §13.8(c)(1) and (3) of this chapter (relating to Loan Structure and Underwriting Requirements), and NOFA requirements.

(2) Post-Closing Subordinations or Re-subordinations of MFDL Liens where no Ownership Transfer is Occurring. Re-subordination of the Direct Loan in conjunction with refinancing may be approved post-closing, provided the conditions in subparagraphs (A) - (F) of this paragraph are met:

(A) The Borrower is current with loan payments to the Department, and no notice has been given of any Event of Default on any MFDL loan. Histories of late or non-payment on any other MFDL loan may result in denial of the request;

(B) The refinance does not propose payment to any of the Development Owner or Developer parties (including the Limited Partners);

(C) A proposal for partial repayment of the MFDL lien is made with the request, but this is not required if the Borrower is proposing to apply at least $35,000 a Unit to property improvements;

(D) The loan documents do not state that the MFDL lien is due upon refinance;

(E) The new superior lien is in an amount that is equal to or less than the original senior lien and does not negatively affect the financial feasibility of the Development.

(i) For purposes of this section, a negative effect on the financial feasibility of the Development shall mean a reduction in the total Debt Coverage Ratio (DCR) of more than 0.05, or if the DCR no longer meets the requirements of 10 TAC §11.302 of this title (relating to Underwriting Rules and Guidelines); and

(ii) Changes to accommodate refinancing with a new superior lien that is in an amount that exceeds the original senior lien and which will be directly applied to property improvements, as evidenced by the loan or security agreements (exclusive of fees associated with the refinance and any required reserves), will be considered on a case by case basis; and

(F) The subordination or re-subordination request does not include a request to subordinate or resubordinate any MFDL LURA, with the exception of partial subordination or re-subordination of receivership rights (subject to the proposed receiver entity or Affiliate not having been Debarred by the Department or on the Federal Suspended or Debarred Listing).

(3) Workout Arrangements. Changes required to the Department's loan terms or amounts that are part of an approved Asset Management Division workout arrangement may be approved after Construction Completion.

(d) Contract Assignments and Assumptions of MFDL Liens. The Executive Director or authorized designee may approve the Contract Assignment and Assumption of MFDL Liens following approval of an Ownership Transfer request if the conditions in paragraphs (1) - (3) of this subsection are met and the conditions in (c)(2) of this section are met:

(1) The assignment or assumption is not prohibited by the Contract, Loan Documents, or regulations and the loan documents do not state that the MFDL loan is due upon sale, transfer, or refinance;

(2) The assignment or assumption request is based on either subparagraph (A) or (B) of this paragraph:

(A) There are insufficient funds available in the transaction to fully repay the Direct Loan at the time of acquisition, for which Deferred Developer Fee, Development Owner or Affiliate Contributions, or other similar liabilities will not be considered in determining whether the Direct Loan could be repaid at the time of acquisition; or

(B) The new superior lien will be directly applied to property improvements as evidenced by the loan or security agreements, exclusive of fees associated with the new financing and any required reserves; and

(3) The corresponding Ownership Transfer has been approved in accordance with all requirements in 10 TAC §10.406 of this title (relating to Ownership Transfers), and no prospective Owner including any person, or affiliate, as those terms are defined in 2 CFR Part 180 and 2 CFR Part 2424, Subpart I, has been subject to state Debarment or are on the Federal Suspended or Debarred Listing. This includes Board Members and Limited Partners.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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CHAPTER 27. TEXAS FIRST TIME HOMEBUYER PROGRAM RULE

10 TAC §§27.1 - 27.9

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule, §§27.1 - 27.9 without changes to the proposed text as published in the February 6, 2026 issue of the *Texas Register* (51 TexReg 674). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being repealed because there are no costs associated with the repeal.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Robert Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous proposed adoption making changes to the rule governing the Texas First Time Homebuyer Program Rule.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

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

4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Texas First time Homebuyer Program.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated rule that better protects the Department's liens on applicable properties. There will be no economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The Department accepted public comment from February 6, 2026, to March 8, 2026. No public comment was received and the repeal is adopted without changes.

STATUTORY AUTHORITY. The repeal is adopted pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959

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10 TAC §§27.1 - 27.9

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule, §§27.1 - 27.9 without changes to the text previously published in the February 6, 2026 issue of the *Texas Register* (51 TexReg 675). The rule will not be republished. The purpose of the rule is to make changes that address lien status for homes purchased under the program. There have recently been instances where the Department's lien status on loans in the portfolio has been jeopardized by lien holders with smaller liens; when those lien holders pursue foreclosure it puts the Department's larger loan at risk of non-repayment.

To prevent this from occurring a policy has been drafted in the rule that specifies that a loan made by the Department must be: 1) first lien if it is the largest loan; or 2) the Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan is at least 55% of the combined repayable or amortized loans (however, liens related to other subsidized funds provided in the form of grants and non-amortizing mortgage loans, such as deferred payment or forgivable loans, must be subordinate to the Department's mortgage); and 3) For real property encumbered by deed restrictions governed by a property owners' association or homeowners' association, the association shall subordinate its assessment liens in the deed restrictions to the Department's Mortgage Loan.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted, because it meets the exceptions described under items (c)(4) and (9) of that section. The rules relate to a program through which the Department accesses federal bond authority to provide affordable housing opportunities to low income Texans under Treasury Regulations §143. The rule also ensures compliance with Tex. Gov't Code, Subchapter MM, Texas First-Time Homebuyer Program. Even though excepted, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rules that govern the Texas First Time Homebuyer Program.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rule does not increase or decrease the number of individuals to whom this rule applies; and

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

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

2. This rule relates to the general program guidelines for the First Time Homebuyer Program. The beneficiaries of this program are individual households, therefore no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a revision to a rule that applies to a program for which individual households are the beneficiaries, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates to homebuyer assistance to individual households, not limited to any given community or area within the state; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a more updated rule better protecting the Department's lien status. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

SUMMARY OF PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department accepted public comment from February 6, 2026, to March 8, 2026. No public comment was received and the rule is adopted without changes.

STATUTORY AUTHORITY. The rule is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 28. TAXABLE MORTGAGE PROGRAM

10 TAC §§28.1 - 28.9

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 28, Taxable Mortgage Program, without changes to the proposed text as published in the February 6, 2026 issue of the *Texas Register* (51 TexReg 678). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because there are no costs associated with the repeal.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Robert Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous proposed adoption making changes to the rule governing the Taxable Mortgage Program.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

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

4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Taxable Mortgage Program.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated rule that better protects the Department's liens on applicable properties. There will be no economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. Public comment was accepted from February 6, 2026, to March 8, 2026. No public comment was received and the repeal is adopted without changes.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2026.

TRD-202601548

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 29, 2026
Proposal publication date: February 6, 2026
For further information, please call: (512) 475-3959

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10 TAC §§28.1 - 28.9

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 28, Taxable Mortgage Program Rule, without changes to the proposed text as published in the February 6, 2026 issue of the *Texas Register* (51 TexReg 679). The rules will not be republished. The purpose of the new rules is to make changes that address lien status for homes purchased under the program. There have recently been instances where the Department's lien status on loans in the portfolio has been jeopardized by lien holders with smaller liens; when those lien holders pursue foreclosure it puts the Department's larger loan at risk of non-repayment.

To prevent this from occurring a policy has been drafted in the rule that specifies that a loan made by the Department must be: 1) first lien if it is the largest loan; or 2) the Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan is at least 55% of the combined repayable or amortized loans (however, liens related to other subsidized funds provided in the form of grants and non-amortizing mortgage loans, such as deferred payment or forgivable loans, must be subordinate to the Department's mortgage); and 3) For real property encumbered by deed restrictions governed by a property owners' association or homeowners' association, the association shall subordinate its assessment liens in the deed restrictions to the Department's Mortgage Loan.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions apply. However, no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the new rule will be in effect:

1. The new rules do not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rules that govern the Taxable Mortgage Program.

2. The new rules do not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.

3. The new rules changes do not require additional future legislative appropriations.

4. The new rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rules is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rules will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rules does not increase or decrease the number of individuals to whom this rule applies; and

8. The new rules will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

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

2. These rules relates to the general program guidelines for the Taxable Mortgage Program. The beneficiaries of this program are individual households, therefore no small or micro-businesses are subject to the rule.

3. The Department has determined that because these rules relates only to a revision to a rule that applies to a program for which individual households are the beneficiaries, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rules do not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because the rules relate to homebuyer assistance to individual households, not limited to any given community or area within the state; therefore no local employment impact statement is required to be prepared for the rules.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a more updated rule reflecting transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rules because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

SUMMARY OF PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. Public comment was accepted from February 6, 2026, to March 8, 2026. No public comment was received and the rules are adopted without further changes.

STATUTORY AUTHORITY. The rules are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson
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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

SUBCHAPTER C. LICENSE APPLICATIONS AND RENEWALS

16 TAC §60.39

The Texas Commission of Licensing and Regulation (Commission) adopts a new rule at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter C, §60.39, regarding Procedural Rules of the Commission and the Department, without changes to the proposed text as published in the January 23, 2026, issue of the *Texas Register* (51 TexReg 359). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC, Chapter 60, implement Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation.

The adopted rule establishes a process for verifying an applicant's eligibility for licensure or license renewal under Title 8, Chapter 14 of the United States Code when the applicant is selected for verification. Federal law restricts eligibility for certain state and local public benefits, including professional and commercial licenses, based on an individual's citizenship or immigration status.

The adopted rule is necessary to ensure that the Department can verify applicant eligibility in a manner consistent with applicable federal requirements while maintaining the security and integrity of the licensing process. The adopted rule identifies acceptable

forms of documentation that may be used to establish eligibility and authorize the Department to require such documentation when verification is necessary, preserving flexibility and minimizing unnecessary burden on applicants. The adopted rule also clarifies the consequences of an applicant's failure to provide sufficient documentation.

SECTION-BY-SECTION SUMMARY

The adopted rule adds new §60.39, Verification of Applicant Eligibility.

Subsection (a) requires the Department to verify an applicant's eligibility for licensure or license renewal under Title 8, Chapter 14 of the United States Code when the applicant is selected for verification pursuant to Department procedures designed to protect the integrity of the licensing process.

Subsection (b) provides that an applicant selected for verification must submit documentation establishing eligibility before a license may be issued or renewed and identifies categories of documents that the Department may accept as evidence of eligibility, subject to verification as necessary.

Subsection (c) defines "certified birth certificate" for purposes of eligibility verification and specifies acceptable United States birth and birth-abroad documentation.

Subsection (d) clarifies that an applicant's failure to provide sufficient documentation of eligibility may result in denial of the application.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULE

The Department drafted and distributed the proposed rule to people internal and external to the agency. The proposed rule was published in the January 23, 2026, issue of the *Texas Register* (51 TexReg 359). The Department requested public comments on the proposed rule and information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis. The public comment period closed on February 23, 2026. The Department received written comments from 433 interested parties on the proposed rule. The Department also received 16 oral comments at the public hearing on the proposed rule held on March 5, 2026, and 19 additional oral comments at the Commission meeting on March 24, 2026. In total, the Department received 468 public comments. The public comments are summarized below. Many comments addressed more than one issue; therefore, individual comments may be reflected in more than one summary category below.

Comment: Three hundred and twenty-five commenters opposed the proposed rule because they believe requiring verification of lawful presence for licensure or renewal could reduce the available workforce in industries regulated by the Department and negatively affect businesses and consumers. Commenters expressed concern that the proposed rule could contribute to labor shortages in industries such as cosmetology, barbering, electrical work, and other licensed occupations. Some commenters stated that reduced workforce availability could increase costs for consumers or reduce the availability of services. Organizations referenced in these comments include Arlington Beauty College; B1 Careers Beauty School; Colour Beauty School; KM Beauty Institute; RioMen Barber School; Riva Institute of Cosmetology; The Men Barber School (including Austin and Round Rock locations); Sloan Beauty Academy; Houston Brows & Beauty School; Torito & Liza Beauty Academy; Texas A&M University School of Law Entrepreneurship Legal Clinic; Curly Hues by Hayley; Zaide Beauty; Sleeping Beauty Lash Institute & Salon LLC; KC Beauty Salon and Barber Shop; Martha's Hair Salon; MV Salon; Culley Enviro LLC; and Castro and Legal.

Department Response: The Department disagrees that the proposed rule will significantly reduce the licensed workforce or harm the Texas economy. The proposed rule establishes procedures for verifying eligibility for licensure or license renewal consistent with existing federal law, specifically 8 U.S.C. §1621, which governs eligibility for certain state and local public benefits, including professional and commercial licenses. The proposed rule implements existing federal eligibility requirements and do not create new eligibility standards. The proposed rule does not impose a citizenship requirement. Individuals who are not U.S. citizens may still be eligible for licensure if they meet the eligibility criteria established under federal law, including individuals who are qualified aliens, nonimmigrants under the Immigration and Nationality Act, or otherwise authorized under federal law. The Department accepts a broad range of documentation demonstrating lawful presence or authorization to work in the United States, including identification or immigration-related documents, such as permanent resident cards, certificates of naturalization or citizenship, employment authorization documents, Forms I-94 reflecting lawful admission or parole, refugee documentation, and other immigration status documentation. Because the proposed rule implements existing federal law and does not change the professional qualifications required for licensure, the Department made no changes to the proposed rule in response to these comments.

Comment: Two hundred and one commenters opposed the proposed rule because they expressed concern about documentation requirements or administrative burdens associated with verifying lawful presence for licensure or license renewal. Commenters stated that obtaining or submitting immigration or other identity documentation could create additional procedural requirements for applicants or license holders. Some commenters expressed concern that individuals could encounter difficulty obtaining acceptable documentation or navigating the verification process. Organizations referenced in these comments include the Texas A&M University School of Law Entrepreneurship Clinic; Arlington Beauty College; B1 Careers Beauty School; Colour Beauty School; KM Beauty Institute; RioMen Barber School; Sloan Beauty Academy; Houston Brows & Beauty School; Lashing Out Ink Academy; Sleeping Beauty Lash Institute & Salon LLC; and The Men Barber School.

Department Response: The Department disagrees that the proposed rule imposes unreasonable documentation or administrative burdens. Verification of eligibility ensures that the Department issues licenses only to individuals who meet the eligibility criteria established by federal law. The Department accepts a broad range of documentation demonstrating lawful presence or authorization to work in the United States, including identification or immigration-related documents, such as permanent resident cards, certificates of naturalization or citizenship, employment authorization documents, Forms I-94 reflecting lawful admission or parole, refugee documentation, and other immigration status documentation. Because the proposed rule implements existing federal law and provide multiple options for documentation, the Department made no changes to the proposed rule in response to these comments.

Comment: One hundred fifty-eight commenters opposed the proposed rule because they believe the rule could negatively affect students and educational programs that prepare individuals

for licensed occupations, including barbering and cosmetology schools. Commenters stated that students invest significant amounts of time and financial resources to complete required training hours and examinations and expressed concern that some students could complete their education but later be unable to obtain a license due to documentation requirements. Some commenters also expressed concern that the proposed rule could affect enrollment at licensing schools or training programs. Organizations referenced in these comments include Sloan Beauty Academy; Advanced Barber College & Hair Design; Texas A&M University School of Law Entrepreneurship Clinic; KM Beauty Institute; Colour Beauty School; RioMen Barber School; The Men Barber School; Lashing Out Ink Academy; and Sleeping Beauty Lash Institute & Salon LLC.

Department Response: The Department disagrees that the proposed rule will prevent otherwise eligible students from obtaining licensure. The proposed rule reflects existing federal law and do not change licensing education or competency requirements. Individuals who satisfy federal eligibility requirements remain eligible to obtain a license after completing the applicable education and examination requirements. The Department made no changes to the proposed rule in response to these comments.

Comment: One hundred and fourteen commenters opposed the proposed rule because they stated that licensed occupations provide important employment opportunities and that the rule could affect individuals who rely on their licenses to support themselves and their families. Organizations referenced in these comments include Arlington Beauty College; B1 Careers Beauty School; Colour Beauty School; KM Beauty Institute; Texas A&M University School of Law Entrepreneurship Clinic; RioMen Barber School; Sloan Beauty Academy; Sleeping Beauty Lash Institute & Salon LLC; KC Beauty Salon and Barber Shop; Martha's Hair Salon; MV Salon; and Zaide Beauty.

Department Response: The Department understands that many individuals rely on licensed occupations for employment but disagrees that the proposed rule improperly restricts those opportunities. The proposed rule establishes procedures to verify eligibility for licensure consistent with federal law and do not modify professional competency requirements for licensure. The Department made no changes to the proposed rule in response to these comments.

Comment: Thirty-eight commenters opposed the proposed rule because they believe occupational licensing requirements should focus on professional competency, education, and public safety rather than immigration-related documentation requirements. Commenters stated that licensing standards should primarily address professional qualifications and consumer protection. Organizations referenced in these comments include Tha Nail Artistry LLC; Texas A&M University School of Law Entrepreneurship Clinic; and KM Beauty Institute.

Department Response: The Department disagrees with the comment that verification of eligibility under federal law falls outside the Department's regulatory authority. Federal law, specifically 8 U.S.C. §1621, restricts eligibility for certain state and local public benefits, including professional and commercial licenses. The proposed rule establishes procedures for verifying eligibility consistent with those federal requirements while maintaining the Department's existing professional competency standards and licensing requirements. The Department made no changes to the proposed rule in response to these comments.

Comment: Twenty-two commenters representing advocacy organizations, chambers of commerce, legal organizations, and public officials opposed the proposed rule and expressed concern that the rule could create barriers to licensure and employment opportunities. Some commenters stated that workforce participation and economic opportunity could be affected by additional documentation requirements. Organizations referenced in these comments include the Greater Austin Hispanic Chamber of Commerce; San Antonio Hispanic Chamber of Commerce; Texas Hispanic Chamber of Commerce Coalition; TAMACC - Texas Association of Mexican American Chambers of Commerce; LULAC; LULAC District 12 (Austin); Latina Policy Coalition; Texas A&M University School of Law Entrepreneurship Legal Clinic; the Texas House Democratic Caucus; the Office of Senator Sarah Eckhardt (District 14); and the Marquez Foundation.

Department Response: The Department appreciates the comments submitted by these organizations and individuals but disagrees that the proposed rule creates improper barriers to licensure. The proposed rule establishes procedures for verifying eligibility consistent with federal law under 8 U.S.C. §1621 and do not impose a citizenship requirement. Individuals who are not U.S. citizens may still be eligible for licensure if they meet the eligibility criteria established under federal law. Because the proposed rule implements existing federal law and do not alter professional competency requirements for licensure, the Department made no changes to the proposed rule in response to these comments.

Comment: Twenty commenters supported the proposed rule. Commenters generally stated that the proposed rule is necessary to ensure compliance with federal law governing license eligibility and that verifying eligibility promotes fairness, integrity, and consistency in the licensing system. Organizations referenced in these comments include FACT Ed- Texas Barber & Cosmetology Educators; and H. Smith Electric.

Department Response: The Department appreciates the comments submitted in support of the proposed rule. The Department made no changes to the proposed rule in response to these comments.

Comment: Eight commenters submitted comments that did not clearly indicate whether they supported or opposed the proposed rule. These commenters generally requested clarification regarding documentation requirements, the verification process, or the potential effects of the proposed rule on applicants and license holders.

Department Response: The Department appreciates these comments and notes that the proposed rule is intended to clarify the process the Department uses to verify eligibility for licensure or license renewal. The proposed rule identifies categories of documentation that may be accepted to verify eligibility and are designed to ensure that the Department can verify eligibility in a manner consistent with applicable federal law while minimizing unnecessary burden on applicants. Because the Department determined that the proposed rule already provides sufficient clarity regarding the verification process, the Department made no changes to the proposed rule in response to these comments.

COMMISSION ACTION

At its meeting on March 24, 2026, the Commission adopted the proposed rule as published in the *Texas Register*.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rule is also adopted under Title 8, Chapter 14 of the United States Code.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code §51.308, §29.902, and Chapter 1001 (Driver Education and Safety); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1806 (Residential Solar Retailers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2001 (Bingo); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); Transportation Code, Chapters 521 (Driver Education and Safety); 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety); and Utilities Code, Chapter 42 (Electric Vehicle Charging Stations). No other statutes, articles, or codes are affected by the adopted rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 10, 2026.

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Deanne Rienstra
General Counsel
Texas Department of Licensing and Regulation
Effective date: May 1, 2026
Proposal publication date: January 23, 2026
For further information, please call: (512) 475-4879

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CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.3; Subchapter M, §84.500 and §84.504; Subchapter N, §84.600; and the Program Guides, regarding the Driver Education and Safety program, without changes to the proposed text as published in the December 19, 2025, issue of the *Texas Register* (50 TexReg 8133). These rules will not be republished.

The Commission also adopts an amendment to existing rules at 16 TAC Chapter 84, the Program of Organized Instruction in Driver Education and Traffic Safety, also known as the "POI-DE Program Guide" regarding the Driver Education and Safety program, with changes to the proposed text as published in the December 19, 2025, issue of the *Texas Register* (50 TexReg 8400). These rules will be republished. The POI-DE will be republished in the "In-Addition" section of the *Texas Register*.

The amendment to the POI-DE Program Guide is found at Section 1.1.5(Q) of that document.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules under 16 TAC, Chapter 84, implement Senate Bill (SB) 1366, 89th Legislature, Regular Session (2025), and Texas Education Code, Chapter 1001, Driver and Traffic Safety Education.

The adopted rules are necessary to address the Legislature's driver training instruction changes for the implementation of SB 1366 for the DES program, which mandates that driver training course curriculum includes information relating to the dangers and penalties associated with violating traffic laws in construction and maintenance work zones. The DES Program Guides were amended to May 2026 to reflect the changes mandated by SB 1366 as well. The Program Guides will be published separately in the "In Addition" section of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

The adopted rules amend §84.3, Materials Adopted by Reference, to reflect the change in the new edition dates for the DES Program Guides to "May 2026 Edition". The adopted rules include a change approved by the Driver Education and Traffic Safety Advisory Committee at its meeting on February 12, 2026, to correct a grammatical error by adding the word "and" at the end of the sentence at Section 1.1.5(Q).

The adopted rules amend §84.500, Courses of Instruction for Driver Education Providers, to include, consistent with SB 1366, that information related to penalties, fines, and inherent dangers such as bodily injury, death, and property damage associated with the violation of traffic laws in construction and maintenance work zones be included in driver education course curriculum.

The adopted rules amend §84.504, Driving Safety Courses of Instruction, to include, consistent with SB 1366, that information related to penalties, fines, and inherent dangers such as bodily injury, death, and property damage associated with the violation of traffic laws in construction and maintenance work zones be included in driving safety course curriculum.

The adopted rules amend §84.600, Program of Organized Instruction, to: (1) clarify that the educational objectives in §84.500 (Courses of Instruction for Driver Education Providers), and the Program Guides apply to exempt entities such as public schools, educational service centers, colleges and universities in their instruction; and (2) include, consistent with SB 1366, that information related to penalties, fines, and inherent dangers such as

bodily injury, death, and property damage associated with violation of traffic laws in construction and maintenance work zones be included in their driver education course curriculum.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the December 19, 2025, issue of the *Texas Register* (50 TexReg 8133). The Department requested public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. The public comment period closed on January 20, 2026.

The Department received comments from two interested parties in response to the required summary of the proposed rules, which was posted on the Department's website and distributed on December 9, 2025, the same day that the proposed rules were filed with the Texas Register, but before the official publication of the proposed rules and the official start of the public comment period. The Department did not receive any comments from interested parties on the published proposed rules during the official public comment period. The public comments are summarized below.

Comments in Response to the Posted Summary

Comment: One commenter submitted a request to eliminate the observation instruction hours requirement from the driver education training since the reporting of such hours is not commonly accurate and can be done by the student from simply observing a parent, guardian, or other authorized person driving the vehicle in which the student occupies.

Department Response: The Department appreciates the public comment and notes that observation instruction is recognized by state law for driver education courses at Texas Education Code §1001.101 and cannot be amended by administrative rules. Moreover, observation instruction hours were not contemplated by SB 1366 and, as such, is outside of the scope of this rulemaking. The Department made no change to the proposed rules in response to this comment.

Comment: One commenter submitted a comment in support of the Department's changes as a result of SB 1366 and welcomed additional information be included in driver education curriculum regarding safe vehicle operation in construction and maintenance work zones.

Department Response: The Department appreciates the comment in support of the proposed rule changes. The Department made no change to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Driver Training and Traffic Safety Advisory Board met on February 12, 2026, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with the change to correct the grammatical error at Section 1.1.5(Q) in the POI-DE.

At its meeting on March 24, 2026, the Commission adopted the proposed rules and program guides as published in the *Texas Register* with the change in the POI-DE program guide as recommended by the Advisory Board.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §84.3

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the adopted rules are to be adopted is Senate Bill 1366, 89th Legislature, Regular Session (2025).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Department of Licensing and Regulation
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SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §84.500, §84.504

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the adopted rules are to be adopted is Senate Bill 1366, 89th Legislature, Regular Session (2025).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER N. PROGRAM INSTRUCTION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES COURSE REQUIREMENTS

16 TAC §84.600

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the adopted rules are to be adopted is Senate Bill 1366, 89th Legislature, Regular Session (2025).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE
SUBCHAPTER G. NONPROFIT ORGANIZATIONS

31 TAC §51.164

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 22, 2026, adopted an amendment to 31 TAC §51.164, concerning Best Practices (Officers and Directors), without changes to the proposed text as published in the December 19, 2025, issue of the *Texas Register* (50 TexReg 8157). The rule will not be republished.

The amendment stipulates that the provisions of subsection (b)(3), which prohibit an employee of the department from serving as a member of a non-profit partner (NP), do not apply to the Texas Parks and Wildlife Mutual Association. The Texas Parks and Wildlife Mutual Association (Association) was founded in 1956 with the mission of providing financial assistance to the families/beneficiaries of deceased members (department employees and their spouses). Members receive no compensation from the Association and serve on a voluntary basis.

The Texas Parks and Wildlife Code authorizes the department to work with nonprofit organizations to carry out the mission of the department. The department has determined that the Association assists the department by providing bereavement benefits to employees who are members, including peace officers commissioned by the department, who are not infrequently in life-threatening situations in the line of duty. Similarly, Government Code, Chapter 2255, requires a state agency to adopt rules regarding the relationship between donors and the agency, including the agency's employees, if the agency is authorized to accept donations or if "a private organization exists that is designed to further the purposes and duties of the agency." Although the Association's relationship with the department is not pecuniary, it does exist to assist and support employees of the agency in times of need.

The amendment is necessary to allow the department to recognize the Association as a NP and explicitly acknowledge that a department employee may serve as an officer of the Association without affecting the Association's status as a NP.

The department received no comments opposing or supporting adoption of the rule as proposed.

The rule is adopted under Parks and Wildlife Code, Chapter 11, Subchapter J, which requires the commission to adopt rules governing best practices for nonprofit partners of the agency.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 57. FISHERIES
SUBCHAPTER C. INTRODUCTION OF FISH, SHELLFISH AND AQUATIC PLANTS

31 TAC §57.251, §57.252

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 22, 2026, adopted amendments to 31 TAC §57.251 and §57.252, concerning Introduction of Fish, Shellfish, and Aquatic Plants, without changes to the proposed

text as published in the December 19, 2025, issue of the *Texas Register* (50 TexReg 8171). The rules will not be republished. The rules will function in concert to explicitly acknowledge that macroalgae, as well as plants that reproduce only by spores or fragmentation and emergent aquatic plants, are included in the applicability of department rules governing the introduction of aquatic plants in public waters.

Under Parks and Wildlife Code, §12.015, the department is required to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state. Under Parks and Wildlife Code, §66.015, the department is required to adopt rules governing the issuance of permits for the introduction of fish, shellfish, and aquatic plants into public waters and stipulates that no person may place any species of fish, shellfish, or aquatic plant into the public water of the state without a permit issued by the department. Under Agriculture Code, §134.005, the department is required to adopt rules to carry out its duties under that chapter with respect to the regulation of aquaculture.

The department has recently been approached by external parties interested in conducting introductions of marine macroalgae in public water for private research purposes related to potential for aquaculture. In evaluating these inquiries, the department has identified what could be interpreted as a lacuna in the applicability of rules under which the department may authorize the introduction of aquatic plants, specifically, the sufficiency of the current regulatory definition of "aquatic plant" with respect to classes of aquatic plants such as macroalgae (and, in addition, plants that reproduce by means other than seeds, and emergent aquatic plants). The current definition has been in effect since the late 1970s and the department has determined that it should be restated to reflect the current status of botanical understanding of aquatic plants and clearly include macroalgae. The department has determined that any macroalgae introductions have the potential to adversely impact habitats and create user conflict and because oversight of such activities is necessary and warranted to protect native organisms and ecosystems, the definition should be amended to introduce greater clarity. The department emphasizes that if a prospective introduction to public water of any species is determined by the department to be problematic, it will not be authorized.

On this basis, the amendment to §57.251, concerning Definitions, replaces the current definition with a new definition that more completely encompasses the variety of aquatic plants to which the rules apply.

The amendment to §57.252, concerning General Provisions, provides for department waiver of permit requirements for introductions coordinated with or conducted under the direction of the department for purposes of mitigation or restoration (or any other environmentally beneficial reason). In cases such as the aftermath of major storms, flood events, or environmental incidents, restoration efforts can be large and concentrated. The department seeks to facilitate the rapid recovery of ecosystems in such cases and reasons that waiver of permit requirements, in the presence of department coordination or direction, is sensible.

The department received two comments opposing adoption of the rules as proposed. One of the comments was not germane to the rulemaking. The other commenter did not provide a reason or rationale for opposing adoption.

The department received five comments supporting adoption of the rules as proposed.

The amendments are adopted under Parks and Wildlife Code, §12.015, which requires the department to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state; §66.015(c), which requires the department to establish rules related to the issuance of permits for the introduction of fish, shellfish, or aquatic plants into the public water of the state; and Agriculture Code, §134.005, which requires the commission to adopt rules necessary to carry out its responsibilities under that chapter to regulate aquaculture.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 65. WILDLIFE
SUBCHAPTER F. PERMITS FOR AERIAL MANAGEMENT OF WILDLIFE AND EXOTIC SPECIES

31 TAC §65.151, §65.152

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 22, 2026, adopted amendments to 31 TAC §65.151 and §65.152, concerning Permits for Aerial Management of Wildlife and Exotic Species. The amendment to §65.152 is adopted with changes to the proposed text as published in the December 19, 2025, issue of the *Texas Register* (50 TexReg 8179) and will be republished. The proposed amendment to §65.151 is adopted without change and will not be republished.

The change to §65.152, concerning General Rules, removes "aoudad sheep" from the provisions of subsection (d)(3) as proposed because the commission does not have the statutory authority to exempt persons taking aoudad sheep from the hunting license requirements of Parks and Wildlife Code, Chapter 42. The change also inserts the word "than" in subsection (d)(3) for grammatical sense.

The amendments comport existing rules governing the take of wildlife and exotic animals from aircraft to reflect the provisions of Senate Bill 1245, enacted by the most recent session of the Texas Legislature. Senate Bill 1245 amended Parks and Wildlife Code, Chapter 43, Subchapter G, to allow a qualified landowner or landowner's agent to contract to participate as a hunter or observer in using a helicopter to take depredating aoudad sheep from a helicopter under a permit issued by the department.

The amendments add "aoudad sheep" where necessary to make the provisions of the subchapter functional with respect to the management of aoudad sheep by means of aircraft. Such changes are made throughout the rules as necessary.

The department received nine comments opposing adoption of the rules as proposed. All nine commenters provided a reason

or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Six commenters opposed adoption of the rules as proposed and stated that hunting from aircraft should not be allowed. The commenters variously stated that the practice is dangerous, landowners should be compensated, federal law prohibits shooting animals from aircraft, and that aoudad are unique animals. The department agrees with the comments and responds that the rules do not allow sport hunting from aircraft but do allow the take of aoudad from aircraft for management purposes, to wit, the eradication of aoudad in Texas, which compete with and pose a disease threat to native species of wildlife and their habitats. No changes were made as a result of the comments.

One commenter opposed adoption and stated that aoudad hunting from aircraft should be part of the department's hunter encouragement programs. The department disagrees with the comment and responds that the take of aoudad from helicopters is not sport hunting and the department neither supports nor encourages the sustainable management of aoudad populations for hunting purposes. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the take of aoudad from helicopters is inhumane, indiscriminate, violative of the "fair chase" doctrine, could destabilize local ecosystems, displace other wildlife, and threaten the hunting economy by eliminating license sales and hunting opportunity. The commenter also stated that a thorough economic impact analysis should be conducted. The department disagrees with the comment and responds first, that because the take of aoudad from helicopters is not sport hunting, the "fair chase" doctrine does not apply, and second, that because aoudad are not indigenous and pose a direct threat to native wildlife and native ecosystems, additional flexibility for landowners to eliminate aoudad is desirable. The department further responds that aerial take is neither inhumane nor indiscriminate and is an accepted tool to manage invasive, exotic species including aoudad. The department also notes that ideally, "hunting opportunity" with respect to free-ranging exotic species means "eradication" because exotic species compete with, displace, and threaten indigenous species; therefore, any effects at the local or landscape scales resulting from the removal of aoudad are desirable. Finally, the department disagrees that any economic impact analysis is necessary, because the rule allows take of aoudad only under permits that grant a legal privilege -- the aerial management of wildlife for purposes that explicitly exclude sport hunting for profit. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that it is imperative that private landowners receive compensation for aerial management activities on their properties and that persons participating in such activities be allowed to retain the horns of animals killed. The department disagrees with the comment and responds that landowners are free to manage their properties as they see fit, including by engaging third parties to conduct aerial management activities, but sport hunting from aircraft is expressly prohibited by state and federal law. No changes were made as a result of the comment.

The amendments are adopted under the provisions of Senate Bill (S.B.) 1245, enacted by the 89th Texas Legislature (R.S.), which allows a qualified landowner or landowner's agent to contract to participate as a hunter or observer in using a helicopter to take depredating aoudad sheep from a helicopter under a permit issued by the department, and Parks and Wildlife Code, Chapter 43, Subchapter G, which provides the commission with authority to make regulations governing the management of wildlife or exotic animals by the use of aircraft, including forms and procedures for permit applications; procedures for the management of wildlife or exotic animals by the use of aircraft; limitations on the time and the place for which a permit is valid; establishment of prohibited acts; rules to require, limit, or prohibit any activity as necessary to implement Parks and Wildlife Code, Chapter 43, Subchapter G.

§65.152. General Rules.

(a) A person who holds an AMP is authorized to engage in the management of wildlife and exotic animals by the use of aircraft only on the tract(s) of land specified in the LOA. The AMP must be carried in an aircraft when the aircraft is engaged in activities authorized by the AMP, unless the aircraft is a UAV, in which case the AMP shall be in possession of the operator.

(b) A pilot of an aircraft used for the management of wildlife or exotic animals must maintain, on a daily basis, a flight log and report. The daily flight log must be current and available for inspection by game wardens at reasonable times. Each AMP holder and pilot shall comply with all FAA regulations for the specific type of aircraft listed on their AMP.

(c) It is lawful for a person who holds an AMP to contract with a qualified Landowner, Agent, or Subagent to act as a gunner the taking of depredating feral hogs, aoudad sheep, or coyotes from a helicopter, provided:

(1) the contract is in writing and signed by the Landowner or Agent;

(2) a department-approved Subagent authorization form has been properly
executed and is in the physical possession of the Subagent during all AMP activities in which the Subagent participates; and

(3) the AMP holder possesses a valid, properly executed LOA.

(d) A person (which includes a pilot, applicant, gunner, observer, or Subagent) commits an offense if:

(1) the person counts, photographs, relocates, captures, hunts, or takes or attempts to count, photograph, relocate, capture, hunt, or take from an aircraft any wildlife or exotic animals other than wildlife or exotic animals authorized by the AMP and LOA;

(2) the person intentionally harasses any wildlife or exotic animals by the use of an aircraft other than wildlife or exotic animals authorized in an AMP and LOA;

(3) the person participates in the take or attempted take of any wildlife or exotic animals other than depredating feral hogs or coyotes without having on his or her person a valid hunting license issued by the department;

(4) the person pilots an aircraft to manage wildlife or exotic animals without a valid pilot's license as required by the FAA;

(5) the person pays, barters, or exchanges anything of value to participate as a gunner, observer, or Subagent except as may be otherwise provided in this subchapter;

(6) the person acting as a gunner or pilot under an AMP takes or attempts to take any wildlife or exotic animals for any purpose other than is necessary to protect or to aid in the administration of lands, water, wildlife, livestock, domesticated animals, human life, or crops, except that any wildlife or exotic animals, once lawfully taken pursuant to this subchapter may be sold if their sale is not otherwise prohibited;

(7) the person acting as a gunner or pilot takes or attempts to take wildlife or exotic animals during the hours between 1/2-hour after sunset and 1/2-hour before sunrise;

(8) the person operates an aircraft for the management of wildlife or exotic animals and is not named as an authorized pilot by an AMP;

(9) the person takes, kills, captures, or attempts to take, kill, or capture more wildlife or exotic animals on properties than are specified in the LOA;

(10) the person uses an AMP for the purpose of sport hunting;

(11) the person is engaging in AMP activities and pilots an aircraft over land for which the person has not received written permission to overfly, except as is necessary to gain initial access to the land described in the LOA prior to commencing AMP activities and to leave following the conclusion of AMP activities; or

(12) the person otherwise violates a provision of this subchapter.

(e) It is lawful for a pilot operating under a valid AMP or AMP holder to use a UAV at any time solely for the purpose of locating feral hogs; however, no person may take or attempt to take feral hogs from a UAV.

(f) These rules do not exempt any person from the requirement for other licenses or permits required by statute or rule of the commission.

(g) The department may waive the fee requirements of this subchapter for an employee of a governmental entity acting in the scope and course of official duties.

(h) The department will not approve an LOA for the take of feral hogs or aoudad sheep on a tract of land where feral hogs or aoudad sheep have been released or liberated by or with the approval of the Landowner or Agent for the purpose of being hunted.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION

DIVISION 2. PUBLICIZING PROCUREMENT: CMBL, ESBD, AND VPTS

34 TAC §20.115

The Comptroller of Public Accounts adopts amendments to §20.115, concerning the vendor performance tracking system, without changes to the proposed text as published in the February 20, 2026, issue of the *Texas Register* (51 TexReg 1031). The rule will not be republished. The amendments eliminate the potential for discrepancies between letter grades submitted by state agencies by calculating report grades based on the agency-selected performance factors rather than agency's assigning grades independently of the performance factor selections. The amendments establish a more objective vendor performance grading system.

These amendments remove language providing that vendor grades in the tracking system are submitted by state agencies. Section 20.115 now provides for vendor grades to be assigned based on vendor performance reports and is consistent with amendment of §20.509, concerning vendor performance reporting. The amendments revise subsections (a), (b), (d) and (e) to delete the requirement for state agencies to assign a grade to the tracking system and remove corresponding references. The amendments further revise subsection (d) to indicate the overall vendor performance letter grade for each vendor will be assigned based on performance evaluations provided by state agencies using the numerical value system provided. The amendments revise (2) to remove a description of how letter grades were calculated before February 5, 2001, which no longer serves a purpose.

The comptroller did not receive any comments regarding adoption of the amendment.

These amendments are adopted under Government Code, §2155.0012, which authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2155; §2156.0012, which authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2156; and §2262.056, which authorizes the comptroller to adopt rules to efficiently and effectively administer a vendor performance tracking system.

The amendments implement Government Code, §2155.089 and §2262.055.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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SUBCHAPTER F. CONTRACT MANAGEMENT

DIVISION 2. REPORTS AND AUDITS

34 TAC §20.509

The Comptroller of Public Accounts adopts amendments to §20.509, concerning vendor performance reporting, without changes to the proposed text as published in the February 20, 2026, issue of the *Texas Register* (51 TexReg 1033). The rule will not be republished. The amendments eliminate the potential for discrepancies between letter grades submitted by state agencies by calculating report grades based on the agency-selected performance factors rather than agency's assigning grades independently of the performance factor selections. The amendments establish a more objective vendor performance grading system.

These amendments remove language providing that a state agency shall submit a vendor performance report and grade to the tracking system, and these amendments are consistent with amendments of §20.115, concerning the vendor performance tracking system. Section 20.509 now requires a state agency to submit only a vendor performance report, and a grade will be calculated by the tracking system and published by the comptroller. These amendments revise subsections (a) through (e) to delete the requirement for a state agency to submit a grade to the tracking system. The amendments reorganize subsection (d) into paragraphs and further revise subsection (e) to require the grade assigned to a vendor to be based on a state agency's evaluation of the contract performance.

The comptroller did not receive any comments regarding adoption of the amendment.

These amendments are adopted under Government Code, §2155.0012, which authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2155; §2156.0012, which authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2156; and §2262.056, which authorizes the comptroller to adopt rules to efficiently and effectively administer a vendor performance tracking system.

The amendments implement Government Code, §2155.089 and §2262.055.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 13. CONTROLLED SUBSTANCES

SUBCHAPTER G. FORFEITURE AND DESTRUCTION

37 TAC §§13.151, 13.153, 13.160, 13.161, 13.165

The Texas Department of Public Safety (the department) adopts amendments to §§13.151, 13.153, 13.160, 13.161, and 13.165, concerning Forfeiture And Destruction. These rules are adopted without changes to the proposed text as published in the February 27, 2026, issue of the *Texas Register* (51 TexReg 1275) and will not be republished.

The rule changes increase safety and efficiency of public safety personnel and property. Specifically, the addition of vape pens, a newer evidence type, to the excess quantity definition is added due to the fire hazard surrounding long-term battery storage. Other changes allow for the usage of courts' electronic records when making destruction authorization decisions. In addition, the amendments place clear inventory requirements on law enforcement personnel for controlled substance property prior to destruction or submission to a crime laboratory. It also clarifies that destruction may occur after laboratory analysis without further inventory if the repackaging and seal remain intact and clarifies destruction procedures with no laboratory analysis. Additional amendments remove an outdated requirement to submit a report to the department's Narcotics Regulation Bureau, which no longer exists, and updates the division's name.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce Chapter 481 and §481.154(a)(1) which authorizes the director to adopt reasonable rules and procedures concerning summary forfeiture and summary destruction of controlled substance property or plants.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER D. DRIVER IMPROVEMENT

37 TAC §§15.82 - 15.85

The Texas Department of Public Safety (the department) adopts amendments to §§15.82 - 15.85, concerning Driver Improvement. These rules are adopted without changes to the proposed text as published in the February 27, 2026, issue of the *Texas Register* (51 TexReg 1277) and will not be republished.

The amendments align the rules with House Bill 4804, 89th Leg., R.S. (2025), which repealed Texas Transportation Code, §521.297(b) and §522.087(b). The amendments are necessary

to conform with statutory changes which were required for compliance with Federal Motor Carrier Safety Administration regulations necessitating the elimination of a hearing and appeal process for certain commercial driver license (CDL) disqualifications.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521, Driver's Licenses; Texas Transportation Code §521.291, which authorizes the department to adopt rules to administer Subchapter N, General Provisions Relating to License Denial, Suspension, or Revocation; Texas Transportation Code §522.005, which authorizes the department to adopt rules necessary to administer Chapter 522, Commercial Driver's Licenses; and House Bill 4804, 89th Leg., R.S. (2025), which repeals Texas Transportation Code, §521.297(b) and §522.087(b).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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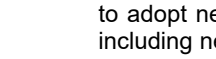

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 211. CRIMINAL HISTORY OFFENSE AND ACTION ON LICENSE

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts revisions to 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, by repealing §211.1 and §211.2, and adopting new §211.1. The department also adopts amendments to current 43 TAC Subchapter B, Criminal History Evaluation Guidelines and Procedures, by retitling Subchapter B, amending §211.11, and adding new §211.7 and §211.9. In addition, the department adopts new Subchapter C, Criminal Offense Guidelines: Motor Carriers; §211.23 and §211.25. These revisions concern the consequences of certain criminal convictions and imprisonment following certain criminal convictions or actions under Occupations Code, Chapter 53.

The department adopts the following rules without changes to the proposed text as published in the December 26, 2025, issue of the *Texas Register* (50 TexReg 8521), and will not republish these rules: §§211.1, 211.9, 211.11, and 211.23. The department adopts §211.7 and §211.25 with changes at adoption to the proposed text as published in the December 26, 2025, issue of the *Texas Register* (50 TexReg 8521), and will republish these rules. In conjunction with this adoption, the department is adopting the repeal of §211.1 and §211.2 concerning general provisions regarding actions on certain licenses, which is also published in this issue of the *Texas Register*.

REASONED JUSTIFICATION. New §211.1 and new Subchapter C are necessary to implement Senate Bill (SB) 1080, 89th Legislature, Regular Session (2025) regarding motor carriers. The revisions to Subchapters A and B are necessary to make conforming changes to Chapter 211 due to the addition of new Subchapter C.

Prior to the effective date of SB 1080 on May 27, 2025, Occupations Code, §53.021(b) automatically revoked licenses by operation of law without any action by the department following the license holder's imprisonment for any felony. SB 1080 amended Occupations Code, §53.021(b) to narrow the law so that a license is automatically revoked upon imprisonment only for specific felonies, including offenses that directly relate to the duties and responsibilities of the licensed occupation.

For purposes of Occupations Code, Chapter 53, a certificate of registration that the department issues to a motor carrier under Transportation Code, Chapter 643 is a license. Occupations Code, §53.001 and Government Code, §2001.003 define the word "license" as "the whole or a part of a state agency permit, certificate, approval, registration, or similar form of permission required by law." The department must therefore define in rule which offenses directly relate to the duties and responsibilities of a licensed motor carrier, so that the department will be able to determine which licenses are revoked by operation of law under Occupations Code, §53.021(b)(1)(A).

Subchapter A. General Provisions

The adoption of the repeal of §211.1 enabled the department to adopt new §211.1, which applies to the entire Chapter 211, including new Subchapter C regarding motor carriers.

Adopted new §211.1(a) states that the purpose of Chapter 211 is to implement Occupations Code, Chapter 53 regarding the consequences of a criminal conviction on a license that the department is authorized to issue. Adopted new §211.1(b) incorporates laws by reference to provide the applicable definitions regarding specific offenses referenced in Chapter 211. Occupations Code, §53.021 references "an offense that directly relates to the duties and responsibilities of the licensed occupation," and does not limit the language to offenses under Texas law. Adopted new §211.1(b) therefore incorporates definitions from federal laws, other states' laws, and the laws of foreign jurisdictions. Adopted new §211.1(c) defines "department" as the Texas Department of Motor Vehicles for clarity and consistency.

Subchapter B. Criminal History Evaluation Guidelines and Procedures: Motor Vehicle, Salvage Vehicle, and Trailer Industries

An adopted amendment retitles Subchapter B to only apply to the motor vehicle, salvage vehicle, and trailer industries because the department's adopted revisions to Chapter 211 include new Subchapter C regarding motor carriers.

The adopted repeal of §211.1 and §211.2 enabled the department to adopt modified versions of the prior text of these sections as new §211.7 and §211.9 to only apply to Subchapter B, regarding the motor vehicle, salvage vehicle and trailer industries, due to the adopted new Subchapter C regarding motor carriers.

Adopted new §211.7 modifies the language in the repealed version of §211.1 to only apply to Subchapter B, clarifies that the referenced statutes are Texas statutes, moves the definitions to subsection (a) so that they appear before the use of the defined terms in adopted new §211.7, and makes the format of the definitions consistent with the department's other administrative rules. The department adopts §211.7(a)(2) with a change at adoption to change the word "does" to "do" to correct a grammatical error. Adopted new §211.9 modifies the language in repealed §211.2 to only apply to Subchapter B and clarifies that the reference to the Occupations Code is a reference to the Texas Occupations Code. The text in adopted new §211.7 and §211.9 clarify that the statutory citations are to Texas law, and are necessary due to references to the laws in other jurisdictions in Chapter 211 and the adopted revisions to Chapter 211.

Adopted amendments to §211.11 update cross-references to adopted new §211.9, update the language to only apply to Subchapter B, and clarify that the statutory citations are to Texas law for the reasons stated above. Adopted amendments to §211.11 also modify the current citations to statutes for consistency with the citations to Texas law throughout Chapter 211.

Subchapter C. Criminal Offense Guidelines: Motor Carriers

Adopted new Subchapter C implements SB 1080 for motor carriers by defining which offenses directly relate to the duties and responsibilities of motor carriers for purposes of Occupations Code, §53.021(b)(1)(A). The department submitted an early draft of adopted new §211.23 and §211.25 to the Motor Carrier Regulation Advisory Committee (MCRAC) for review and feedback at the MCRAC meeting in October of 2025. The members of MCRAC did not have any formal advice or recommendations in the form of an approved motion. However, in response to a request from industry and a member of MCRAC, the department modified adopted new §211.23(a), prior to publication in the *Texas Register*, to limit the definition for the word "license" to a sole proprietor motor carrier for the reasons stated below.

Adopted new §211.23(a) provides the definition for the word "license" as used in adopted new Subchapter C to limit the term to a certificate of registration issued by the department under Texas Transportation Code, Chapter 643 to a sole proprietor motor carrier. This definition prevents confusion about the application of Occupations Code, §53.021(b)(1)(A) by excluding a legal entity because a legal entity as a whole cannot be imprisoned for an offense, even though a legal entity's employees or representatives can be imprisoned for an offense. Only an individual can be imprisoned. Adopted new §211.23(a) also clarifies that a license authorizes a motor carrier to engage in certain operations under Transportation Code, Chapter 643. Although the department issues one type of license under Transportation Code, Chapter 643, a licensed motor carrier may transport the following, subject to compliance with the applicable laws regarding that type of operation: cargo, passengers, household goods, or hazardous materials.

Occupations Code, §53.025 requires each state agency to issue guidelines that "must state the reasons a particular crime is considered to relate to a particular license." To fulfill that requirement, adopted new §211.23(b) states the reasons each offense referenced in adopted new §211.25 is considered to relate to the particular duties and responsibilities of a license for a motor carrier. Adopted new §211.23(b) explains why the different offenses listed in adopted new §211.25 relate to the different types of motor carrier operations that are authorized under a motor carrier license, depending on how the specific duties and responsibilities of each type of motor carrier operation provide a greater opportunity for an individual, who is predisposed to commit specific types of violations, to commit those offenses.

Adopted new §211.25 lists the felony offenses that directly relate to the duties and responsibilities of a licensed motor carrier under Occupations Code, §53.021(b)(1)(A). Adopted new §211.25(a) explains that under Occupations Code, §53.021(b)(1)(A), a license holder's license is automatically revoked by operation of law on the license holder's imprisonment after a conviction of a felony offense that directly relates to the duties and responsibilities of a license holder. Adopted new §211.25(b) explains that the department used the factors listed in Occupations Code, §53.022 to determine that the offenses detailed in adopted new §211.25(c) through (g) directly relate to the duties and responsibilities of a license holder under Transportation Code, Chapter 643. Adopted new §211.25(b) also clarifies that the listed offenses include offenses under the laws of the United States or another state of the United States if the offense contains elements that are substantially similar to the elements of an offense under the laws of Texas, except as stated otherwise in adopted new Subchapter C.

While the offenses listed in adopted new §211.25(c) apply to all licensed motor carriers, the offenses listed in adopted new §211.25(d) through (g) apply only to specific types of motor carrier operations due to the particular opportunities to commit certain offenses under a specific type of motor carrier operation. A licensed motor carrier controls, operates, or directs the operation of one or more motor vehicles that transport persons or cargo, which enables the license holder to commit certain offenses that involve the use of a motor vehicle. Also, a licensed motor carrier provides the department with certain information and documents that the department uses to administer and enforce Texas Transportation Code, Chapter 643 and that law enforcement uses to enforce certain laws, including Texas Transportation Code, Chapter 644 and the administrative rules that the Texas Department of Public Safety adopted under Texas Transportation Code, Chapter 644. In addition, a potential customer of a motor carrier has access to certain information on the department's website to determine whether to use the services of a particular licensed motor carrier, and the licensed motor carrier must provide the department with most of this information as part of a license application and any required updates. A licensed motor carrier is in a position of trust with the department because a licensed motor carrier must provide accurate information and documents to the department, so the department's records are reliable for the department, law enforcement, and potential shippers or passengers of the motor carrier.

The offenses that relate to all licensed motor carriers under adopted new §211.25(c) include offenses that involve the smuggling of a person, the use of a motor vehicle for trafficking or smuggling persons, bribery, perjury, obstructing a road, intoxication while operating a motor vehicle, delivery of a controlled substance, fraudulent emissions inspections, and knowingly operating a commercial motor vehicle in violation of an out-of-service order if the commercial motor vehicle was involved in a motor vehicle collision that resulted in bodily injury or death of a person. Some of these offenses, like the smuggling of a person, the use of a motor vehicle for trafficking or smuggling persons, and delivery of a controlled substance address Occupations Code, §53.022(3) because being a licensed motor carrier gives an individual an opportunity to engage in that sort of criminal activity again. Other offenses listed in adopted new §211.25(c), like intoxication while operat-

ing a motor vehicle, align with Occupations Code, §53.022(4) because intoxication inhibits a person from being able to fulfill the duties of a licensed motor carrier, including safe operation. Still other offenses such as those involving fraudulent emissions inspections, bribery, perjury, and knowingly operating a commercial motor vehicle in violation of an out-of-service order during which the commercial motor vehicle was involved in a motor vehicle collision that resulted in bodily injury or death of a person align with Occupations Code, §53.022(5) because they correlate with the duties and responsibilities of motor carriers to comply with safety laws, to remain safe on the road, and to cooperate with, provide accurate information to, and follow the orders of government officials, including law enforcement. The offenses listed in §211.25(c) are thus all equally relevant to all motor carriers, regardless of their specific type of operation. The department adopts §211.25(c) with changes at adoption to move the offense described by Texas Penal Code, §42.03 from §211.25(c)(3) to new §211.25(c)(4) and renumbered the remaining paragraphs under §211.25(c) because the offense of obstruction of a highway or other passageway under §42.03 does not fall within Penal Code, Title 8 regarding offenses against public administration.

Adopted new §211.25(d) sets out offenses that relate only to a passenger motor carrier due to the position of trust and close physical proximity between the motor carrier and its passengers. The offenses listed in adopted new §211.25(d) are in addition to the offenses listed in adopted new §211.25(c). A passenger loses some of their autonomy over themselves and their tangible personal property, documents, and cargo while they are in another person's motor vehicle. If the passenger is a child, there is even more risk of a crime involving the child or the child's tangible personal property, documents, or cargo. The offenses in adopted new §211.25(d) include offenses that harm or endanger another person as set out in Texas Penal Code, Title 5, such as criminal homicide, kidnapping, sexual offenses and assaultive offenses. The offenses in adopted new §211.25(d) also include offenses that endanger families or children, such as enticing a child from their parent's custody, violating a court protective order, selling or purchasing children, continuous family violence, using a minor to sell or display harmful material to a minor, employing a child to work in a sexually-oriented commercial activity, possessing child pornography, and any offense for which the person convicted must register as a sex offender. The listed offenses in adopted new §211.25(d) also include offenses against tangible personal property, a document, or cargo belonging to another person, such as the offenses of criminal mischief, robbery, and theft. All of these offenses fit within Occupations Code, §53.022(1) due to the nature and seriousness of the crimes, which involve the safety or well-being of a person. Also, most of these offenses fit within Occupations Code, §53.022(3) because a licensed motor carrier operating as a passenger carrier has an increased opportunity to engage in this sort of criminal activity again.

Adopted new §211.25(e) defines offenses that relate only to a for-hire motor carrier of cargo, including household goods and hazardous materials, due to the motor carrier's specific position of trust with the shipper and access to the shipper's cargo. A shipper and an individual associated with the shipper may interact with the motor carrier in person, which provides an opportunity for the motor carrier to commit an offense against the individual. Also, a shipper loses control over their cargo when the motor carrier has possession of the cargo. The offenses listed in adopted new §211.25(e) are in addition to the offenses listed in adopted new §211.25(c). These offenses include any offense for which the person must register as a sex offender, and the offenses set out in Texas Penal Code, Title 5, such as criminal homicide, kidnapping, sexual offenses, and assaultive offenses. In keeping with Occupations Code, §53.022(3), a motor carrier's contact with a shipper gives a licensed motor carrier an increased opportunity to engage in these offenses against the shipper and individuals associated with the shipper. The offenses listed in adopted new §211.25(e) also include offenses against tangible personal property, a document, or cargo belonging to another person, such as the offenses of criminal mischief, robbery, burglary of a vehicle, criminal trespass, theft, and fraud. Since a motor carrier of cargo is entrusted with a shipper's cargo for transport, the motor carrier has an increased opportunity to engage in these property crimes. In keeping with Occupations Code, §53.022(3), a motor carrier's contact with a shipper and the shipper's property gives a licensed motor carrier an increased opportunity to engage in these offenses against the shipper.

Adopted new §211.25(f) enumerates offenses that relate only to a household goods carrier because they are allowed access to the shipper's home, household goods, and household members, including children. These offenses are in addition to the offenses listed in §211.25(c) and (e). Adopted new §211.25(f) includes offenses related to real property, including arson, criminal mischief, and burglary. Household goods carriers are not just entrusted with personal property, but they also have access to and gain knowledge of the customer's home from or to which the customer is moving. A household goods carrier therefore has an increased opportunity to commit these offenses by virtue of their licensed profession, in accordance with Occupations Code, §53.022(3). The offenses listed in adopted new §211.25(f) also include using a minor to sell or display harmful material to a minor, employing a child to work in a sexually-oriented commercial activity, and possession of child pornography. These offenses align with Occupations Code, §53.022(3) because a household goods carrier has more access to children as the carrier moves a family's household goods from one home to another.

Adopted new §211.25(g) lists offenses that relate only to a motor carrier who transports hazardous materials, which create opportunities for those motor carriers to commit offenses that endanger the public and the environment. The offenses in adopted new §211.25(g) apply to these motor carriers in addition to the offenses listed in §211.25(c) and (e). These offenses include any offense related to hazardous material, waste disposal, water contamination, air pollution, or other environmental offenses under Texas law, federal law, or the law of another state. For example, 49 U.S.C. §5124 provides for a criminal penalty of imprisonment for up to 10 years for a person who violates certain provisions of federal law regarding the transportation of hazardous materials. The offenses under adopted new §211.25(g) address Occupations Code, §53.022(3) because by virtue of having access to hazardous materials, a licensed motor carrier that transports hazardous materials has an increased opportunity to engage in environmental offenses, such as improper transportation, disposal, or discharge of those materials.

Adopted new §211.25(h) states that if a license holder's imprisonment occurs on or after May 1, 2026, for a conviction for any offense described by adopted new §211.25(c) through (g), the license holder's license is automatically revoked on the date of the imprisonment if at least one of the offenses that resulted in the imprisonment falls within the scope of any offense described by adopted new §211.25(c) through (g). The department adopts

§211.25(h) with a change at adoption to clarify that the subsection is limited by the language in §211.25(c) through (g), which state the type of motor carrier operation to which subsections (c) through (g) apply. These adopted revisions to Chapter 211 will become effective on May 1, 2026. The department intends to apply the adopted revisions prospectively, so that the license of only those individuals who are imprisoned on or after May 1, 2026, will be automatically revoked by operation of law for an offense specified under adopted new §211.25(c) through (g) that applies to that license holder's type of operation. Adopted new §211.25(h) requires that at least one of the offenses that resulted in the imprisonment falls within the scope of any offense described in adopted new §211.25(c) through (g) that applies to that license holder's type of operation because these new subsections identify the offenses that directly relate to the duties and responsibilities of a licensed motor carrier as required by Occupations Code, §53.021(b)(1)(A).

SUMMARY OF COMMENTS.

No comments on the proposed revisions were received.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §211.1, §211.2

STATUTORY AUTHORITY. The Texas Department of Motor Vehicles (department) adopts the repeals under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, to revoke or suspend a license, to place on probation, or to reprimand a license holder if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted repeals implement Occupations Code, Chapters 53, 2301 and 2302; and Transportation Code, Chapters 503 and 1002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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43 TAC §211.1

STATUTORY AUTHORITY. The Texas Department of Motor Vehicles (department) adopts the new section under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, to revoke or suspend a license, to place on probation, or to reprimand a license holder in certain situations, such as if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted new section implements Occupations Code, Chapters 53, 2301 and 2302; and Transportation Code, Chapters 503, 643, and 1002.

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SUBCHAPTER B. CRIMINAL HISTORY EVALUATION GUIDELINES AND PROCEDURES: MOTOR VEHICLE, SALVAGE VEHICLE, AND TRAILER INDUSTRIES

43 TAC §§211.7, 211.9, 211.11

STATUTORY AUTHORITY. The Texas Department of Motor Vehicles (department) adopts the new rules and revisions under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, to revoke or suspend a license, to place on probation, or to reprimand a license holder if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted new rules and revisions implement Occupations Code, Chapters 53, 2301 and 2302; and Transportation Code, Chapters 503 and 1002.

§211.7. Definitions and Purpose.

(a) When used in this subchapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise.

(1) License--Any license issued by the department under:

(A) Texas Transportation Code, Chapter 503;

(B) Texas Occupations Code, Chapter 2301; or

(C) Texas Occupations Code, Chapter 2302.

(2) Retail license types--Those license types which require holders to interact directly with the public, but do not include other license types that do not generally interact directly with the public, including manufacturers, distributors, and general distinguishing number holders for the following vehicle categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle, heavy duty truck, transmission, wholesale motor vehicle dealer, and wholesale motor vehicle auction.

(b) The licenses issued by the department create positions of trust. License holder services involve access to confidential information; conveyance, titling, and registration of private property; possession of monies belonging to or owed to private individuals, creditors, and governmental entities; and compliance with federal and state environmental and safety regulations. License holders are provided with opportunities to engage in fraud, theft, money laundering, and related crimes, and to endanger the public through violations of environmental and safety regulations. Many license holders provide services directly to the public, so licensure provides persons predisposed to commit assaultive or sexual crimes with greater opportunities to engage in such conduct. To protect the public from these harms, the department shall review the criminal history of license applicants before issuing a new or renewal license and may take action on a license holder who commits an offense during the license period based on the guidelines in this subchapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. CRIMINAL OFFENSE GUIDELINES: MOTOR CARRIERS

43 TAC §211.23, §211.25

STATUTORY AUTHORITY. The Texas Department of Motor Vehicles (department) adopts new Subchapter C under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted new subchapter implements Occupations Code, §53.021(b)(1)(A) and Transportation Code, Chapter 643.

§211.25. Criminal Offense Guidelines; Imprisonment.

(a) Under Texas Occupations Code, §53.021(b)(1)(A), a license holder's license is automatically revoked by operation of law on the license holder's imprisonment after a felony conviction for an offense that directly relates to the duties and responsibilities of the licensed occupation.

(b) The department has determined, under the factors listed in Texas Occupations Code, §53.022, that the offenses detailed in subsections (c) through (g) of this section directly relate to the duties and responsibilities of license holders under Texas Occupations Code, §53.021(b)(1)(A). Such offenses include offenses under the laws of the United States or another state of the United States if the offense contains elements that are substantially similar to the elements of an offense under the laws of this state, except as otherwise stated in this subchapter.

(c) The following offenses apply to a license:

(1) an offense involving the smuggling of a person, as described by Texas Penal Code, Chapter 20;

(2) an offense involving the use or intended use of a motor vehicle, as described by Texas Penal Code, §20.07;

(3) an offense against public administration, as described by Texas Penal Code, Chapters 36 or 37;

(4) an offense involving the obstruction of a highway or other passageway as described by Texas Penal Code, §42.03;

(5) an offense involving intoxication while operating a motor vehicle, as described by Texas Penal Code, Chapter 49;

(6) an offense involving the delivery or intent to deliver a controlled substance, simulated controlled substance, or dangerous drug, as described by Texas Health and Safety Code, Chapter 481, 482, or 483;

(7) an offense as described by Texas Transportation Code, §548.6035 or §644.151; and

(8) an offense of attempting or conspiring to commit any of the foregoing offenses.

(d) The following additional felony offenses apply to a motor carrier of passengers:

(1) an offense against the person, as described by Texas Penal Code, Title 5;

(2) an offense against the family, as described by Texas Penal Code, §§25.04, 25.07, 25.072, 25.08, or 25.11;

(3) an offense against tangible personal property, a document, or cargo belonging to another, as described by Texas Penal Code, Chapters 28, 29, or 31;

(4) an offense against public order and decency, as described by Texas Penal Code §§43.24, 43.251, or 43.262;

(5) a reportable offense conviction under Texas Code of Criminal Procedure, Chapter 62 for which the person must register as a sex offender; and

(6) an offense of attempting or conspiring to commit any of the foregoing offenses.

(e) The following additional felony offenses apply to a for-hire motor carrier of any cargo, including household goods and hazardous materials:

(1) an offense against the person, as described by Texas Penal Code, Title 5;

(2) an offense against tangible personal property, a document, or cargo belonging to another, as described by Texas Penal Code, Chapters 28, 29, 30, 31, or 32;

(3) a reportable offense conviction under Texas Code of Criminal Procedure, Chapter 62 for which the person must register as a sex offender; and

(4) an offense of attempting or conspiring to commit any of the foregoing offenses.

(f) The following additional felony offenses apply to a household goods carrier:

(1) an offense against real property belonging to another, as described by Texas Penal Code, Chapters 28 or 30;

(2) an offense against public order and decency, as described by Texas Penal Code §§43.24, 43.251, or 43.262; and

(3) an offense of attempting or conspiring to commit any of the foregoing offenses.

(g) The following additional felony offenses apply to a motor carrier who transports hazardous materials:

(1) an offense related to hazardous material, waste disposal, water contamination, air pollution, or other environmental offense under a Texas statute or administrative rule;

(2) a federal statute or regulation of the United States related to hazardous material, waste disposal, water contamination, air pollution, or other environmental offense; or

(3) the laws of another state of the United States related to hazardous material, waste disposal, water contamination, air pollution, or other environmental offense, if the offense contains elements that are substantially similar to the elements of an offense under Texas law or a law of the United States.

(h) If a license holder's imprisonment occurs on or after May 1, 2026, for a conviction for any offense described by subsections (c) through (g) of this section, the license holder's license is automatically revoked on the date of the imprisonment if at least one of the offenses that resulted in the imprisonment falls within the scope of any offense described in subsections (c) through (g) of this section that applies to that license holder's type of operation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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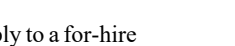

CHAPTER 218. MOTOR CARRIERS

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Chapter 218, Motor Carriers; Subchapter A, General Provisions, §218.2; and Subchapter B, Motor Carrier Registration, §218.13 regarding clarifications to the rule text and the requirement for a sole proprietor motor carrier to provide notice to the department when the sole proprietor is imprisoned after an event described by Occupations Code, §53.021(b) as amended by Senate Bill (SB) 1080, 89th Legislature, Regular Session (2025).

The department adopts §218.2 without changes to the proposed text as published in the December 26, 2025, issue of the *Texas Register* (50 TexReg 8528), and will not republish §218.2. The department adopts §218.13 with changes to the proposed text as published in the December 26, 2025, issue of the *Texas Register* (50 TexReg 8528), and will republish §218.13.

REASONED JUSTIFICATION. The adopted amendments are necessary to provide the department with information to update its records regarding the automatic revocation of a motor carrier's certificate of registration under Occupations Code, §53.021(b). An adopted amendment to §218.2 is necessary to add a definition for the term "for-hire motor carrier." Adopted amendments to §218.13 are also necessary to clarify the rule text regarding motor carriers that are required to provide updates to the department and the use of an authorized representative to file an application with the department or provide the department with any required information and updates.

An adopted amendment to §218.2 adds a definition for the term "for-hire motor carrier" for clarity and consistency because the term is included in current §218.2(b)(14) in the definition for "farm vehicle" and in adopted new §218.13(k). Adopted amendments to §218.2 also renumber the definitions due to the adoption of the new definition for the term "for-hire motor carrier."

An adopted amendment to §218.13(a)(3)(A) deletes a sentence that says, "An authorized representative of the applicant who files an application with the department on behalf of an applicant may be required to provide written proof of authority to act on behalf of the applicant." The deletion is necessary to prevent any conflict with the language in adopted new §218.13(j) and (l). As stated below, adopted new §218.13(l) expands this language for all applicants under Chapter 218 and for a motor carrier with a certificate of registration. A person who submits an application on behalf of a motor carrier might not be the only authorized representative or the current authorized representative for the motor carrier.

Adopted amendments to §218.13(i) clarify that the requirement for a motor carrier to update certain information in the department's online system only applies if the motor carrier has a certificate of registration that has not expired and has not been revoked.

Adopted new §218.13(j) requires a sole proprietor motor carrier with an unexpired certificate of registration to notify the department of the sole proprietor's imprisonment for a reason that would cause automatic revocation of the motor carrier's certificate of registration by operation of law under Occupations Code, §53.021(b). This reporting is necessary as a means for the department to learn about a motor carrier's imprisonment because this information is not automatically reported to the department by state or federal law enforcement agencies. The department has access to criminal history record information regarding convictions under Texas law under Government Code, §411.122(d)(24), but the department is not notified when a motor carrier is imprisoned due to a conviction under Texas law. Also, the department does not receive notice regarding convictions under federal law or the law of a U.S. state other than Texas because the department does not have access to criminal history record information that is maintained or indexed through the Federal Bureau of Investigation under Government Code, §411.12511 regarding a conviction of a motor carrier with a certificate of registration under Transportation Code, Chapter 643.

The department adopts §218.13(j) with an amendment at adoption to clarify that the sole proprietor is not required to use an authorized representative to provide the required notice to the department if the sole proprietor is able to do it. For this reason, the department also adopts §218.13(k)(4)(G) with an amendment at adoption to clarify that the sole proprietor shall only provide the department with the name and phone number of the sole proprietor's authorized representative if applicable.

Adopted new §218.13(j)(1)(A) refers to adopted new 43 TAC §211.25 of this title (relating to Criminal Offense Guidelines; Imprisonment), which the department published in this issue of the *Texas Register,* because adopted new 43 TAC §211.25 defines the offenses that the department has determined are directly related to the duties and responsibilities of a motor carrier with a certificate of registration under Transportation Code, Chapter 643.

Adopted new §218.13(k) provides the deadline for the notice under adopted new §218.13(j), so the department can timely update its records, which the department, law enforcement, and potential customers of a motor carrier rely on. Under adopted new §218.13(k), the deadline for the notice under adopted new §218.13(j) is within 15 days of the date the sole proprietor is imprisoned if the imprisonment occurs on or after May 1, 2026. The notice requirement under adopted new §218.13(j) only applies to an imprisonment that occurs on or after May 1, 2026, because the adopted amendments to §218.13 and adopted new §211.25 will become effective on May 1, 2026.

Adopted new §218.13(k) also requires the notice under adopted new §218.13(j) to be sent to the department using the email address listed on the department's website for this purpose because the department's system is not currently programmed to allow such notices to be provided within the department's system. In addition, adopted new §218.13(k) requires the notice to the department under adopted new §218.13(j) to contain the sole proprietor's name; the sole proprietor's certificate of registration number under Transportation Code, Chapter 643; the date the sole proprietor was imprisoned; the reason the sole proprietor was imprisoned using one of the reasons listed in adopted new §218.13(j); the citation to the statute, administrative rule, or regulation regarding the felony offense for which the sole proprietor was imprisoned if the sole proprietor was imprisoned for a felony offense that falls under adopted new §218.13(j)(1); whether the sole proprietor is a motor carrier of passengers, a for-hire motor carrier of cargo, a household goods carrier, or a motor carrier who transports hazardous materials under Transportation Code, Chapter 643; and the name and phone number of the sole proprietor's authorized representative. The references to Transportation Code, Chapter 643 indicate that the sole proprietor shall provide the requested information regarding the sole proprietor's certificate of registration for intrastate operating authority. Adopted new §218.13(k) requires the notice to include the specified pieces of information so the department can verify whether the sole proprietor motor carrier's certificate of registration was automatically revoked by operation of law under Occupations Code, §53.021(b), including whether a felony conviction directly relates to the duties and responsibilities of the motor carrier under adopted new §211.25, and to allow the department to contact the motor carrier through their authorized representative while the motor carrier is imprisoned.

Adopted new §218.13(j) and (k) only apply to a sole proprietor motor carrier because only an individual can be imprisoned. Also, the department does not have the statutory authority to

apply these amendments to individuals who are associated with a license holder. If the motor carrier is a sole proprietor, the sole proprietor has the license under Transportation Code, Chapter 643. The statutory authority for the automatic revocation of a license under Occupations Code, §53.021(b) only applies to the license holder.

Adopted new §218.13(l) expands the prior language in §218.13(a)(3)(A) by expressly authorizing an applicant under Chapter 218 and a motor carrier with a certificate of registration to submit an application to the department or provide the department with any required information or updates through an authorized representative. Adopted new §218.13(l) also states that, upon request by the department, any representative of an applicant or motor carrier shall provide the department with written proof of authority to act on behalf of the applicant or motor carrier. Adopted new §218.13(l) addresses the reality that authorized representatives are sometimes necessary to run a business, and allows motor carriers to fulfill their duties to provide notice to the department even when their communication is limited because they are imprisoned. In addition, adopted new §218.13(l) clarifies the department's authority to verify that an individual is authorized to act on behalf of an applicant or motor carrier, so the department can ensure the integrity of its records.

The adopted amendments are necessary for the department to maintain accurate records for the department's administration of Transportation Code, Chapter 643 and for law enforcement to enforce certain laws regarding motor carriers, including Transportation Code, Chapter 644 and the administrative rules that the Texas Department of Public Safety adopted under Transportation Code, Chapter 644. In addition, a potential customer of a motor carrier has access to certain information on the department's website to help the potential customer decide whether to use the services of the motor carrier. These adopted amendments require sole proprietor motor carriers to provide the department with the necessary information to enable the department to verify whether the sole proprietor's certificate of registration under Transportation Code, Chapter 643 was automatically revoked by operation of law under Occupations Code, §53.021(b), and the date of the automatic revocation. Adopted new §218.13(k) requires a sole proprietor to tell the department whether the sole proprietor is a motor carrier of passengers, a for-hire motor carrier of cargo, a household goods carrier, or a motor carrier who transports hazardous materials because certain felony offenses under adopted new §211.25 only apply to a motor carrier based on the motor carrier's type of operation. The department will use the information that a sole proprietor provides to the department under adopted new §218.13(j) and (k) to update the department's system to indicate whether the sole proprietor's certificate of registration was revoked, the date of the revocation, and that the revocation occurred under Occupations Code, §53.021(b). Transportation Code, §643.054(a-1) authorizes the department to deny a certificate of registration if the applicant had a registration revoked under Transportation Code, §643.252, so the department's records need to indicate whether a revocation occurred under authority other than Transportation Code, §643.252.

SUMMARY OF COMMENTS.

No comments on the proposed amendments were received.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §218.2

STATUTORY AUTHORITY. The Texas Department of Motor Vehicles (department) adopts amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE. The adopted amendments implement Transportation Code, Chapter 643.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2026.

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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Proposal publication date: December 26, 2025
For further information, please call: (512) 465-4160

SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §218.13

STATUTORY AUTHORITY. The Texas Department of Motor Vehicles (department) adopts amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004(1), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Transportation Code, Chapter 643; and Government Code, §2001.004(1).

§218.13. Application for Motor Carriers Registration.

(a) Form of original application. An original application for motor carrier registration must be filed electronically in the department's designated motor carrier registration system, must be in the form prescribed by the director and must contain, at a minimum, the following information and documents.

(1) USDOT number. A valid USDOT number issued to the applicant.

(2) Applicant information and documents. All applications must include the following information and documents:

(A) The applicant's name, business type (e.g., sole proprietor, corporation, or limited liability company), telephone number, email address, and Secretary of State file number, as applicable. The

applicant's name and email address must match the information the applicant provided to FMCSA to obtain the USDOT number that the applicant provided in its application to the department.

(B) An application submitted by an entity, such as a corporation, general partnership, limited liability company, limited liability corporation, limited partnership, or partnership, must include the entity's Texas Comptroller's Taxpayer Number or the entity's Federal Employer Identification Number.

(C) A legible and accurate electronic image of each applicable required document:

(i) The certificate of filing, certificate of incorporation, or certificate of registration on file with the Texas Secretary of State; and

(ii) each assumed name certificate on file with the Secretary of State or county clerk.

(3) Information and documents regarding applicant's owners, representatives, and affiliates. All applications must include the following information and documents on the applicant's owners, representatives, and affiliates, as applicable:

(A) The contact name, email address, and telephone number of the person submitting the application.

(B) The name, social security number or Individual Taxpayer Identification Number (to the extent the natural person is authorized by law to obtain one of these numbers), date of birth, business address, and ownership percentage for each owner, partner, member, or principal if the applicant is not a publicly traded company.

(C) The name, social security number or Individual Taxpayer Identification Number (to the extent the natural person is authorized by law to obtain one of these numbers), date of birth, and business address for the following if the applicant is owned in full or in part by a legal entity:

(i) each officer, director, or trustee authorized to act on behalf of the applicant; and

(ii) each manager or representative who has or exercises authority to direct some or all of the applicant's operational policy regarding compliance with applicable laws regarding a motor carrier, excluding sales functions, on behalf of the applicant.

(D) The name, employer identification number, ownership percentage, and non-profit or publicly traded status for each legal entity that owns the applicant in full or in part.

(E) The name, social security number or Individual Taxpayer Identification Number (to the extent the natural person is authorized by law to obtain one of these numbers), date of birth, and business address for each person who serves or will serve as the applicant's manager, operator, or representative who has or exercises authority to direct some or all of the applicant's operational policy regarding compliance with applicable laws regarding a motor carrier, excluding sales functions.

(F) A legible and accurate electronic image of at least one of the following unexpired identity documents for each natural person identified in the application:

(i) a driver license issued by a state or territory of the United States. If the driver license was issued by the Texas Department of Public Safety, the image must also include the audit number listed on the Texas driver license;

(ii) Texas identification card issued by the Texas Department of Public Safety under Transportation Code, Chapter 521, Subchapter E, or an identification certificate issued by a state or territory of the United States;

(iii) license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(iv) United States passport; or

(v) United States military identification.

(4) Principal business address and mailing address. The applicant must provide the applicant's principal business address, which must be a physical address. If the mailing address is different from the principal business address, the applicant must also provide the applicant's mailing address.

(5) Legal agent.

(A) A Texas-domiciled motor carrier must provide the name, telephone number, and address of a legal agent for service of process if the agent is different from the motor carrier.

(B) A motor carrier domiciled outside Texas must provide the name, telephone number, and Texas address of the legal agent for service of process.

(C) A legal agent for service of process shall be a Texas resident, a domestic corporation, or a foreign corporation authorized to transact business in Texas with a Texas physical address, rather than a post office box, for service of process.

(6) Description of vehicles. An application must include a motor carrier equipment report identifying each motor vehicle that requires registration and that the carrier proposes to operate. Each motor vehicle must be identified by its vehicle identification number, make, model year, and type of cargo and by the unit number assigned to the motor vehicle by the motor carrier. Any subsequent registration of vehicles must be made under subsection (e) of this section.

(7) Type of motor carrier operations. An applicant must state if the applicant proposes to transport passengers, household goods, or hazardous materials.

(8) Insurance coverage. An applicant must indicate insurance coverage as required by §218.16 of this title (relating to Insurance Requirements).

(9) Safety certification. Each motor carrier must complete, as part of the application, a certification stating that the motor carrier knows and will conduct operations in accordance with all federal and state safety regulations.

(10) Drug-testing certification. Each motor carrier must certify, as part of the application, that the motor carrier is in compliance with the drug-testing requirements of 49 C.F.R. Part 382. If the motor carrier belongs to a consortium, as defined by 49 C.F.R. Part 382, the applicant must provide the names of the persons operating the consortium.

(11) Duration of registration.

(A) An applicant must indicate the duration of the desired registration. Except as provided otherwise in this section, registration may be for seven calendar days, 90 calendar days, one year, or two years. The duration of registration chosen by the applicant will be applied to all vehicles.

(i) Household goods carriers may not obtain seven-day or 90-day certificates of registration.

(ii) Motor carriers that transport passengers in a commercial motor vehicle as defined by Transportation Code,

§548.001(1)(B) may not obtain seven-day or 90-day certificates of registration, unless approved by the director.

(B) Interstate motor carriers that operate in intrastate commerce and meet the requirements under §218.14(c) of this title (relating to Expiration and Renewal of Commercial Motor Vehicles Registration) are not required to renew a certificate of registration issued under this section.

(12) Additional requirements. The following fees, documents, and information must be submitted with the application.

(A) An application must be accompanied by an application fee of:

(i) $100 for annual and biennial registrations;

(ii) $25 for 90-day registrations; or

(iii) $5 for seven-day registrations.

(B) An application must be accompanied by a vehicle registration fee of:

(i) $10 for each vehicle that the motor carrier proposes to operate under a seven-day, 90-day, or annual registration; or

(ii) $20 for each vehicle that the motor carrier proposes to operate under a biennial registration.

(C) An application must be accompanied by proof of insurance or financial responsibility and the insurance filing fee as required by §218.16.

(D) An application must include the completed New Applicant Questionnaire (Applicant Questionnaire), which consists of questions and requirements, such as the following:

(i) Have you ever had another motor carrier certificate of registration number issued by the department in the three years prior to the date of this application? If your answer is yes, provide the certificate of registration number for the motor carrier(s). In the Applicant Questionnaire, the word "you" means the applicant or any business that is operated, managed, or otherwise controlled by or affiliated with the applicant or a family member, corporate officer, manager, operator, or owner (if the business is not a publicly traded company) of the applicant. In the Applicant Questionnaire, the word "manager" means a person who has or exercises authority to direct some or all of the applicant's operational policy regarding compliance with applicable laws regarding a motor carrier, excluding sales functions.

(ii) Have you had a Compliance Review or a New Entrant Audit by the Texas Department of Public Safety that resulted in an Unsatisfactory Safety Rating in the three years prior to the date of your application? If your answer is yes, provide the USDOT number(s) and the certificate of registration number(s) issued by the department.

(iii) Are you currently under an Order to Cease from the Texas Department of Public Safety? If your answer is yes, provide the motor carrier's USDOT number(s) and the Carrier Profile Number(s). The Texas Department of Public Safety assigns a Carrier Profile Number (CP#) when they perform a compliance review on a motor carrier's operations to determine whether the motor carrier meets the safety fitness standards.

(iv) Are you related to another motor carrier, or have you been related to another motor carrier within the three years prior to the date of your application? The relationship may be through a person (including a family member), corporate officer, or partner who also operates or has operated as a motor carrier in Texas. If your answer is yes, state how you are related and provide the motor carrier's name and the motor carrier's USDOT number, or the certificate of registration number issued by the department for each related motor carrier.

(v) Do you currently owe any administrative penalties to the department, regardless of when the final order was issued to assess the administrative penalties? If your answer is yes, provide the following information under which the administrative penalties were assessed:

(I) department's notice number(s); and

(II) the motor carrier's USDOT number and certificate of registration number issued by the department;

(vi) Name and title of person completing the Applicant Questionnaire; and

(vii) Is the person completing the Applicant Questionnaire an authorized representative of the applicant? If your answer is yes, please add the person's name, job title, phone number, and address.

(E) An applicant must state if the applicant is domiciled in a foreign country.

(F) An application must include a certification that the information and documents provided in the application are true and correct and that the applicant complied with the application requirements under Chapter 218 of this title (relating to Motor Carriers) and Transportation Code, Chapter 643.

(G) An application must be accompanied by any other information and documents required by the department to evaluate the application under current law, including board rules.

(13) Additional requirements for household goods carriers. The following information, documents, and certification must be submitted with all applications by household goods carriers:

(A) A copy of the tariff that sets out the maximum charges for transportation of household goods, or a copy of the tariff governing interstate transportation services. If an applicant is governed by a tariff that its association has already filed with the department under §218.65 of this title (relating to Tariff Registration), the applicant complies with the requirement in this subparagraph by checking the applicable box on the application to identify the association's tariff.

(B) If the motor vehicle is not titled in the name of the household goods carrier, the following lease information and documentation, notwithstanding §218.18(a) of this title (relating to Short-term Lease and Substitute Vehicles):

(i) a copy of a valid lease agreement for each motor vehicle that the household goods carrier will operate; and

(ii) the name of the lessor and their USDOT number for each motor vehicle leased to the household goods carrier under a short-term lease.

(C) A certification that the household goods carrier has procedures that comply with Code of Criminal Procedure, Article 62.063(b)(3), which prohibits certain people who are required to register as a sex offender from providing moving services in the residence of another person without supervision.

(14) Additional requirements for passenger carriers. The following information and documents must be submitted with all applications for motor carriers that transport passengers in a commercial motor vehicle as defined by Transportation Code, §548.001(1)(B):

(A) If the commercial motor vehicle is titled in the name of the motor carrier, a copy of the International Registration Plan registration receipt or a copy of the front and back of the title for each commercial motor vehicle; or

(B) If the commercial motor vehicle is not titled in the name of the motor carrier, the following lease information and documentation, notwithstanding §218.18(a) of this title:

(i) A copy of a valid lease agreement for each commercial motor vehicle; and

(ii) The name of the lessor and their USDOT number for each commercial motor vehicle leased to the motor carrier under a short-term lease.

(b) Conditional acceptance of application. If an application has been conditionally accepted by the director pursuant to Transportation Code, §643.055, the applicant may not operate the following until the department has issued a certificate under Transportation Code, §643.054:

(1) a commercial motor vehicle or any other motor vehicle to transport household goods for compensation, or

(2) a commercial motor vehicle to transport persons or cargo.

(c) Approved application. An applicant meeting the requirements of this section and whose registration is approved shall be issued the following documents:

(1) Certificate of registration. The department shall issue a certificate of registration. The certificate of registration must contain the name and address of the motor carrier and a single registration number, regardless of the number of vehicles requiring registration that the carrier operates.

(2) Insurance cab card. The department shall issue an insurance cab card listing all vehicles to be operated under the carrier's certificate of registration. The insurance cab card shall be continuously maintained at the motor carrier's principal business address. The insurance cab card must be valid for the same period as the motor carrier's certificate of registration and shall contain information regarding each vehicle registered by the motor carrier.

(A) A current copy of the page of the insurance cab card on which the vehicle is shown shall be maintained in each vehicle listed, unless the motor carrier chooses to maintain a legible and accurate image of the insurance cab card on a wireless communication device in the vehicle or chooses to display such information on a wireless communication device by accessing the department's online system from the vehicle. The appropriate information concerning that vehicle shall be highlighted if the motor carrier chooses to maintain a hard copy of the insurance cab card or chooses to display an image of the insurance cab card on a wireless communication device in the vehicle. The insurance cab card or the display of such information on a wireless communications device shall serve as proof of insurance as long as the motor carrier has continuous insurance or financial responsibility on file with the department.

(B) On demand by a department investigator or any other authorized government personnel, the driver shall present the highlighted page of the insurance cab card that is maintained in the vehicle or that is displayed on a wireless communication device in the vehicle. If the motor carrier chooses to display the information on a wireless communication device by accessing the department's online system, the driver shall locate the vehicle in the department's online system upon request by the department-certified inspector or other authorized government personnel.

(C) The motor carrier shall notify the department in writing if it discontinues use of a registered motor vehicle before the expiration of its insurance cab card.

(D) Any erasure or alteration of an insurance cab card that the department printed out for the motor carrier renders it void.

(E) If an insurance cab card is lost, stolen, destroyed, or mutilated; if it becomes illegible; or if it otherwise needs to be replaced, the department shall print out a new insurance cab card at the request of the motor carrier. Motor carriers are authorized to print out a copy of a new insurance cab card using the department's online system.

(F) The department is not responsible for a motor carrier's inability to access the insurance cab card using the department's online system.

(d) Additional and replacement vehicles. A motor carrier required to obtain a certificate of registration under this section shall not operate additional vehicles unless the carrier identifies the vehicles on a form prescribed by the director and pays applicable fees as described in this subsection.

(1) Additional vehicles. To add a vehicle, a motor carrier must pay a fee of $10 for each additional vehicle that the motor carrier proposes to operate under a seven-day, 90-day, or annual registration. To add a vehicle during the first year of a biennial registration, a motor carrier must pay a fee of $20 for each vehicle. To add a vehicle during the second year of a biennial registration, a motor carrier must pay a fee of $10 for each vehicle.

(2) Replacement vehicles. No fee is required for a vehicle that is replacing a vehicle for which the fee was previously paid. Before the replacement vehicle is put into operation, the motor carrier must notify the department, identify the vehicle being taken out of service, and identify the replacement vehicle on a form prescribed by the department. A motor carrier registered under seven-day registration may not replace vehicles.

(e) Supplement to original application. A motor carrier required to register under this section shall electronically file in the department's designated motor carrier registration system a supplemental application under the following circumstances.

(1) Change of cargo. A registered motor carrier may not begin transporting household goods or hazardous materials unless the carrier submits a supplemental application to the department and shows the department evidence of insurance or financial responsibility in the amounts specified by §218.16.

(2) Change of name. A motor carrier that changes its name shall file a supplemental application for registration no later than the effective date of the change. The motor carrier shall include evidence of insurance or financial responsibility in the new name and in the amounts specified by §218.16. A motor carrier that is a corporation must have its name change approved by the Texas Secretary of State before filing a supplemental application. A motor carrier incorporated outside the state of Texas must complete the name change under the law of its state of incorporation before filing a supplemental application.

(3) Change of address or legal agent for service of process. A motor carrier shall file a supplemental application for any change of address or any change of its legal agent for service of process no later than the effective date of the change. The address most recently filed will be presumed conclusively to be the current address.

(4) Change in principal officers and titles. A motor carrier that is a corporation shall file a supplemental application for any change

in the principal officers and titles no later than the effective date of the change.

(5) Conversion of corporate structure. A motor carrier that has successfully completed a corporate conversion involving a change in the name of the corporation shall file a supplemental application for registration and evidence of insurance or financial responsibility reflecting the new company name. The conversion must be approved by the Office of the Secretary of State before the supplemental application is filed.

(6) Change in drug-testing consortium status. A motor carrier that changes consortium status shall file a supplemental application that includes the names of the persons operating the consortium.

(7) Retaining a revoked or suspended certificate of registration number. A motor carrier may retain a prior certificate of registration number by:

(A) filing a supplemental application to reregister instead of filing an original application; and

(B) providing adequate evidence that the carrier has satisfactorily resolved the issue that gave rise to the suspension or revocation.

(f) Change of ownership. A motor carrier must file an original application for registration when there is a corporate merger or a change in the ownership of a sole proprietorship or of a partnership.

(g) Alternative vehicle registration for household goods agents. To avoid multiple registrations of a motor vehicle, a household goods agent's vehicles may be registered under the motor carrier's certificate of registration under this subsection.

(1) The carrier must notify the department on a form approved by the director of its intent to register its agent's vehicles under this subsection.

(2) When a carrier registers vehicles under this subsection, the carrier's certificate shall include all vehicles registered under its agent's certificates of registration. The carrier must register under its certificate of registration all vehicles operated on its behalf that do not appear on its agent's certificate of registration.

(3) The department may send the carrier a copy of any notification sent to the agent concerning circumstances that could lead to denial, suspension, or revocation of the agent's certificate.

(h) Substitute vehicles leased from leasing businesses. A registered motor carrier is not required to comply with the provisions of subsection (e) of this section for a substitute vehicle leased from a business registered under §218.18 of this title (relating to Short-term Lease and Substitute Vehicles). A motor carrier is not required to carry proof of registration as described in subsection (d) of this section if a copy of the lease agreement for the originally leased vehicle is carried in the cab of the temporary replacement vehicle.

(i) A motor carrier with an unexpired certificate of registration that has not been revoked shall update its principal business address, mailing address, and email address in the department's online system within 30 days of a change to the information.

(j) A sole proprietor with an unexpired certificate of registration shall notify the department as specified in subsection (k) of this section, directly or through the sole proprietor's authorized representative, of the sole proprietor's imprisonment for any of the following:

(1) a felony conviction for any of the following:

(A) an offense that directly relates to the duties and responsibilities of a motor carrier as defined in §211.25 of this title (relating to Criminal Offense Guidelines; Imprisonment);

(B) an offense listed in Code of Criminal Procedure, Article 42A.054; or

(C) a sexually violent offense, as defined by Code of Criminal Procedure, Article 62.001;

(2) felony community supervision revocation;

(3) revocation of parole; or

(4) revocation of mandatory supervision.

(k) The notice under subsection (j) of this section shall be provided to the department:

(1) for an imprisonment that occurs on or after May 1, 2026;

(2) within 15 days of the date the sole proprietor is imprisoned;

(3) using the email address listed on the department's website for this purpose; and

(4) with the following information:

(A) the name of the sole proprietor;

(B) the sole proprietor's certificate of registration number under Transportation Code, Chapter 643;

(C) the date the sole proprietor was imprisoned;

(D) the reason the sole proprietor was imprisoned, using one of the reasons listed in subsection (j) of this section;

(E) the citation to the statute, administrative rule, or regulation regarding the felony offense for which the sole proprietor was imprisoned if the sole proprietor was imprisoned for a felony conviction that falls under subsection (j)(1) of this section;

(F) whether the sole proprietor is a motor carrier of passengers, a for-hire motor carrier of cargo, a household goods carrier, or a motor carrier who transports hazardous materials under Transportation Code, Chapter 643; and

(G) the name and phone number of the sole proprietor's authorized representative, if applicable.

(l) An applicant under this chapter and a motor carrier with a certificate of registration may submit an application to the department or provide the department with any required information and updates through an authorized representative. Upon request by the department, a representative shall provide the department with written proof of authority to act on behalf of the applicant or motor carrier.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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