

Housing Tax Credit Properties After the Compliance Period

2022

Department Contact Information

Mailing Address:
TDHCA
PO Box 13941
Austin, TX 78711-3941

Physical Address:
TDHCA
221 East 11th Street
Austin, TX 78701

Website: www.tdhca.state.tx.us

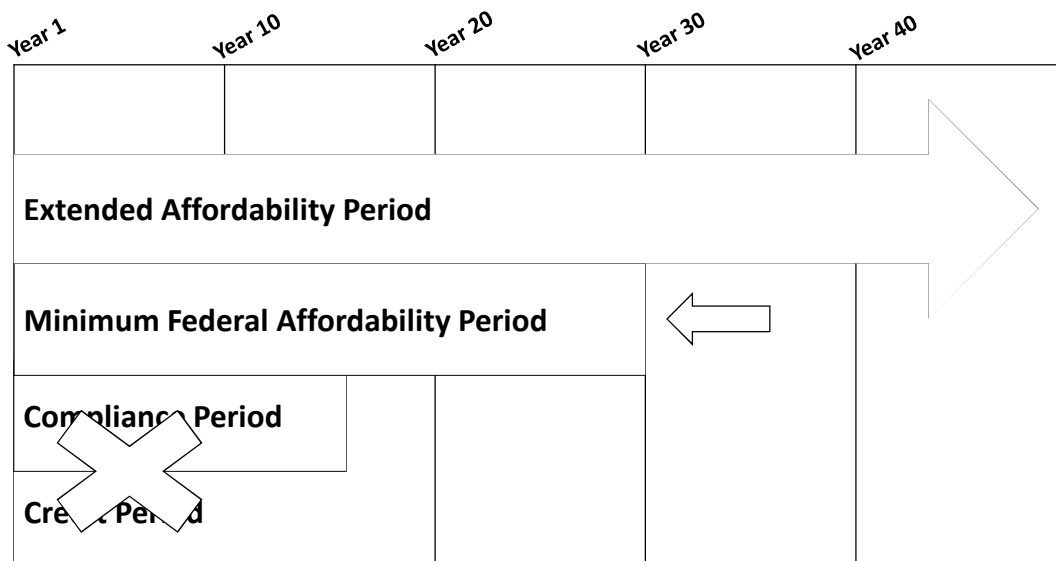
Division Phone Number
(800) 643-8204 (toll free in Texas only)

HTC Properties After the Compliance Period

- 10 Texas Administrative Code §10.623
 - <https://www.tdhca.state.tx.us/pmcdocs/SubchapterF.pdf>
- Commonly referred to as “Going Post-15” or “Post-15”
- The Federal Compliance Period is the first 15 years of the Affordability Period

3

The End of the Compliance Period



4

Post-15: The LURA

Where does the LURA indicate the Compliance Period Length?

If the LURA does not have this section completed or included, then the development does not have a longer Compliance Period.

The LURA will indicate the time of the Longer Compliance Period or Extended Use Period.

If you are not sure, call or email a Compliance Monitor for assistance, we are happy to help you find this.

5

Post-15: The LURA

ADDENDUM B TO DECLARATION – ADDITIONAL USE RESTRICTIONS

MARKETING (10 TAC §10.204(1)(G) AND 10 TAC §10.617, AS MAY BE AMENDED)

All affirmative marketing plans must provide affirmative marketing to persons with disabilities. The Development Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will specifically market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved in writing by the Department.

RENT AND OCCUPANCY RESTRICTIONS

INCOME LIMIT	RENT LIMIT	NUMBER OF UNITS
30% OF AMI	30% OF AMI	
40% OF AMI	40% OF AMI	
50% OF AMI	50% OF AMI	
60% OF AMI	60% OF AMI	
MARKET	MARKET	

If at recertification the Tenant's household income exceeds the applicable limit, to maintain compliance, the owner agrees to follow recertification guidance in accordance with the Department Rules as amended from time to time

LONGER EXTENDED USE PERIOD

In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year period. Development Owner indicates below that the Development will extend the affordability period beyond the 30 years required in the Code as follows:

Add 5 years affordability resulting in an Extended Use Period total affordability period of 35 years

6

Post-15: Department Monitoring

Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA

7

Post-15: Department Monitoring continued

Charges for Amenities

- Owners may not charge fees for amenities that were included in the development's Eligible Basis.

Employee Units

- Employee occupied units will be treated in the manner prescribed in §10.622(h).

8

Post-15: Monitoring Requirements

Post-15: File Monitoring

- Frequency and depth based on risk assessment

Post-15: Physical Inspection

- Every 3 years

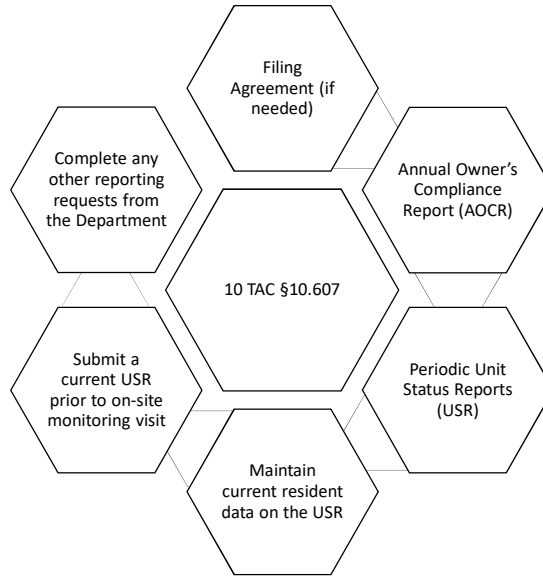
9

Post-15: Physical Inspections

- Inspections will be conducted every three (3) years
- 10% of the total of low-income units
 - No less than five (5), but no more than 35, of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards (UPCS)
- All building systems and exteriors will be inspected
- Post-15 developments must ensure that the development's accessibility standards are continually met
- All developments with four (4) or more units in one building, constructed for first occupancy after March 13, 1991, must comply with FHA standards

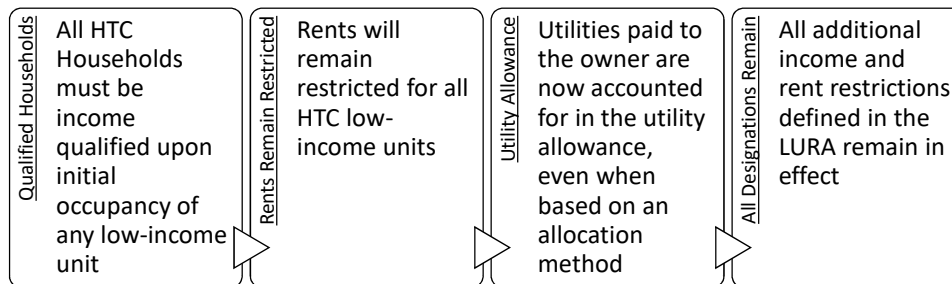
10

Post-15: Reporting Requirements



11

Post-15: Qualifying Households



12

Post-15: Qualifying Households

All HTC households must be income qualified upon initial occupancy of any low-income unit

- Proper verifications of income, assets and student status are required
- The Department's Income Certification form must be completed
 - Unless the development participates in the Rural Rental Housing Program or a project-based HUD Program, in which case the program's certification will be accepted
- All forms can be found online at <https://www.tdhca.state.tx.us/pmcomp/forms.htm>

13

Post-15: Rent Restrictions

Rents will remain restricted for all HTC low-income units

- The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit
 - Any excess rent collected must be refunded
- All additional income and rent restrictions as defined in the LURA remain in effect

14

Post-15: Utility Allowance

After the Compliance Period, utilities paid to the owner are accounted for in the utility allowance

- Regardless of how the utility is calculated (actual use or allocation method) it will all be in the utility allowance
 - For example, when the water and sewer are billed on an allocation method and were previously, during the first 15 years, counted as a mandatory fee would now be included in the utility allowance and not be counted as a mandatory fee
- TCAP, Exchange, Bond, and THTF Developments layered with Housing Tax Credits no longer within the Compliance Period also include utilities paid to the owner as part of the utility allowance
- The Utility Allowance (except for the PHA method) must be submitted to the Department annually for review by October 1st of each calendar year
- The owner is responsible for periodically checking with the applicable PHA to ensure that the most current utility allowance is in place

Post-15: Additional Rent and Occupancy

RENT AND OCCUPANCY RESTRICTIONS

INCOME LIMIT	RENT LIMIT	NUMBER OF UNITS
30% OF AMI	30% OF AMI	3
40% OF AMI	40% OF AMI	0
50% OF AMI	50% OF AMI	8
60% OF AMI	60% OF AMI	29
MARKET	MARKET	0

If at recertification the Tenant's household income exceeds the applicable limit, to maintain compliance, the owner agrees to follow recertification guidance in accordance with the Department Rules as amended from time to time

Additional Rent and Occupancy Restrictions

At least 40 Units in the Project must be occupied by Tenants at or below 50% of Area Median Gross Income. The rents for these Units must not be higher than the allowable tax credit rents at the 50% AMGI level.

Additional Rent and Occupancy Restrictions

At least 0 Units in the Project must be occupied by Tenants at or below 30% of Area Median Gross Income, with rents for these Units no higher than the allowable tax credit rents at such AMGI level. At least 0 Units in the Project must be occupied by Tenants at or below 40% of Area Median Gross Income, with rents for these Units no higher than the allowable tax credit rents at such AMGI level. At least 80 Units in the Project must be occupied by Tenants at or below 50% of Area Median Gross Income, with rents for these Units no higher than the allowable tax credit rents at such AMGI level. If at recertification the Tenant's household income exceeds the applicable limit, then the Unit remains as a Unit restricted at the specified level of AMGI until the next available Unit of comparable or smaller size is designated to replace this Unit. Once the Unit exceeding the specified AMGI level is replaced, then the rent for the previously qualified Unit may be increased, subject to applicable Tax Credit requirements, lease provisions and local tenant-landlord laws.

These are just a few of the examples of what the additional rent and occupancy requirements might look like in the LURA.

Post-15: LURA Requirements

LONGER EXTENDED USE PERIOD

In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year period. Development Owner indicates below that the Development will extend the affordability period beyond the 30 years required in the Code as follows:

LONGER EXTENDED USE PERIOD

In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year period. Development Owner indicates below that the Development will extend the affordability period beyond the 30 years required in the Code as follows:

Add 5 years affordability resulting in an Extended Use Period total affordability period of 35 years

Longer Compliance Period and Extended Use Period

The Compliance Period shall be a period of 25 consecutive taxable years and the Extended Use Period shall be a period of 40 consecutive taxable years, each commencing with the first year of the Credit Period.

Longer Compliance Period and Extended Use Period

The Compliance Period shall be a period of 15 consecutive taxable years and the Extended Use Period shall be a period of 40 consecutive taxable years, each commencing with the first year of the Credit Period.

If the LURA does not include this or the "box" is not checked, the development does not have an extended period.

17

Post-15: LURA Requirements

Some things will not stop being monitored:

- All affirmative marketing requirements will remain in place.
- Marketing to veterans, if required, will continue to be a requirement.
- Rent and Occupancy Restrictions will continue to be required and monitored.

18

Post-15: LURA Requirements, Marketing to Veterans

MARKETING (10 TAC §10.204(1)(G) AND 10 TAC §10.617, AS MAY BE AMENDED)

All affirmative marketing plans must provide affirmative marketing to persons with disabilities. The Development Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will specifically market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved in writing by the Department.

AFFIRMATIVE MARKETING (§10.204 OF THE 2013 UNIFORM MULTIFAMILY RULES)

The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

When the LURA requires the marketing to veterans, it will be required throughout the term of the LURA. This will not stop when the development completes the Compliance Period.

Post-15: LURA Requirements, Elderly Requirements

ELDERLY PREFERENCE DEVELOPMENT

This Development is an elderly development with an "elderly preference" as defined herein, **throughout the term** unless and until the Development is no longer required to operate under the age restrictions imposed by federal assistance. This Development must operate as an Elderly Preference Development as defined.

ELDERLY LIMITATION DEVELOPMENT

Throughout the Term unless otherwise permitted by the Department, this Development must meet the requirements of the Housing for Older Persons Act ("HOPA") under the Federal Fair Housing Act (42 U.S.C. §3601, as amended), receive no funding that requires leasing to persons other than the elderly (unless the funding is from a federal program for which the Secretary of HUD has confirmed that it may operate as a Development that meets the requirements of HOPA), and must be a Development which:

QUALIFIED ELDERLY DEVELOPMENTS¹

Qualified Elderly Projects (2000 and later)

Throughout the Compliance Period, unless otherwise permitted by the Department, this project must conform to the Federal Fair Housing Act and must be a project which:

- (i) is intended for, and solely operated for, persons 55 years of age or older; or
- (ii) is intended and operated for persons 55 years of age or older, where at least one person 55 years of age or older per unit, where at least 80% of the total housing units are occupied by at least one person who is 55 years of age or older; and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for persons 55 years of age or older.

Post-15: LURA Requirements, Supportive Services

PROVISION OF SUPPORTIVE SERVICES/PROVISION OF TENANT SERVICES

The Development Owner has been awarded points based on providing a combination of special supportive services appropriate for the proposed tenants throughout the Extended Use Period. The Development Owner may change, from time to time, the services offered; however, the overall points must remain the same. No rent or other charges shall be assessed to the tenant for providing these services. Services must be provided on-site or transportation to off-site. If services are provided off-site, there must be adequate space for the intended services, and services offered should be accessible to all. Tenants shall be provided written notice of the elections made by the Development Owner. Owner must provide at a minimum _____ total points worth of services (maximum of 9 points; 10 for a Supportive Housing Development proposed by a Qualified Nonprofit) from the following list (the same service may not be used for more than one scoring item):

Supportive Services

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project Owner has contracted for the provision of the following special supportive services that would not otherwise be available to Tenants: Onsite availability of services such as financial planning assistance and courses; health screening services; job training courses; Utility Assistance; GED information; energy conservation services; and family planning. At the time this Declaration is filed, the organization providing these services is Community Action Agency San Patricio County, Inc. The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified provider.

Post-15: LURA Requirements, Supportive Services

PROVISION OF SUPPORTIVE SERVICES – OUTREACH & EDUCATION

The Development Owner was awarded an additional point for certifying that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's tenants, and will make the Development community space available to them on a regularly-scheduled basis for outreach services and education to the tenants. The Development Owner may contact service providers on the Department's behalf or contact other providers that serve the general area in which the Development is located.

Post-15: LURA Requirements, Special Needs

TENANT POPULATIONS WITH SPECIAL NEEDS

At least 5% of the Units are set aside for Persons with Special Needs. "Persons with Special Needs" include all of the following:

- has a physical, mental or emotional impairment that:
 - is expected to be of a long, continued and indefinite duration,
 - substantially impedes his or her ability to live independently, and
 - is of such a nature that the disability could be improved by more suitable housing conditions,
- has a developmental disability, as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. Section 15002); or
- a "person with disability," as defined in 24 CFR
- has alcohol and/or drug addiction
- is a Colonia resident;
- is a victim of domestic violence;
- has HIV/AIDS; or
- is homeless; or
- is a veteran; or
- is a wounded warrior (as defined by the Caring for Wounded Warriors Act of 2008); or
- is a migrant farm worker.

Throughout the Compliance Period

Throughout the Compliance Period unless otherwise permitted by the Department, the Development owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum 12 month period during which Units must either be occupied by Persons with Special Needs or held vacant. The 12 month period will begin on the date each building receives its certificate of occupancy. For buildings that do not receive a certificate of occupancy, the 12 month period will begin on the placed in service date as provided in the Cost Certification manual. After the 12 month period, the owner will no longer be required to hold Units vacant for households with Special Needs, but will be required to continue to affirmatively market Units to households with Special Needs.

Post-15: Lease Requirements §10.613

Tenant Rights & Resources Guide

Cannot evict without good cause

Lease or lease addendum that requires household to report changes in student status

Cannot lock-out or threaten to lock-out

Comply with VAWA

Post-15: Annual Requirements

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

27

Post-15: Changes to Monitoring

- The student restrictions found in §42(i)(3)(D) of the Code are no longer monitored in the same way
 - An income qualified household consisting entirely of full-time students may occupy a low-income unit; however, the development may not market to students
 - The development may not lease more than 15% of the total number of units to student households
- All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings; however, the units will still “swap” status and the move-in date will remain the original move-in date to the development
- The Department will not monitor the development’s application fee after the Federal Compliance Period is over
 - The development should still maintain a reasonable application fee

28

Post-15: Mixed Income Developments

Mixed income developments are not required to conduct annual income recertification:

- Owners must continue to collect and report data on each household that includes the number of household members, age, ethnicity, race, disability status, student status, rental amounts and rental assistance (if any)
- This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or Rural Housing Certification form

29

Post-15: Maintaining Compliance

It is important to maintain compliance after the Compliance Period, even though issues of non-compliance are no longer reported to the IRS on Forms 8823. Issues of non-compliance, which are not corrected in the Corrective Action period are looked at during a Previous Participation Review and could be relevant with the new Enforcement/Debarment rule.

Additionally, if the Development is awarded Acquisition/Rehab funds, it will be expected to comply with the new award and the existing LURA.

30

Post-15: Monitoring Rules

Unless specifically noted in §10.623, all requirements of the 10 TAC, Chapter 10, Subchapter F, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-15 Monitoring Rules apply only to the HTC Developments administered by the Department.

Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

31

Post-15: Enforcement Action

Suggestions to help avoid Enforcement Action after the Federal Compliance Period:

- Make sure that the development is meeting all calendar reporting deadlines
 - Quarterly Vacancy Reporting due the 10th of every January, April, July, October
 - Annual Owners Compliance Report due every April 30th for the year prior
- Check CMTS regularly to ensure that TDHCA correspondence is not accidentally missed, and that any file or UPCS deadlines are calendared and adhered to
- Failure to resolve noncompliance within the corrective action period will result in referral for an administrative penalty and/or debarment, per 10 TAC Chapter 2, which was amended in 2021
- Important note: 10 TAC §2.401(e)(2)(A) now calls for mandatory debarment for responsible parties with a referral ratio of 50% or more of actively monitored developments being referred to the Enforcement Committee on or after 4/1/2021.

32

Post-15: Training

Continue regular training for ownership groups, management companies and property management staff:

- The Department offers trainings in-house and virtual trainings, information on these offerings can be found on the Department's website: <https://www.tdhca.state.tx.us/pmcomp/COMPtrain.html>
- The Department offers webinars in conjunction with the Texas Apartment Association; <https://www.taa.org/education/affordable-housing-programs/>
- Visit <https://www.tdhca.state.tx.us/> and click the link to "Join Our Email List"
- The Department maintains a YouTube Channel with many helpful trainings available, <https://www.youtube.com/user/TDHCA TV>
- The Department has a number of previously recorded trainings and hand-outs available online at <https://www.tdhca.state.tx.us/pmcomp/presentations.htm>

33



THANK YOU

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

TO VIEW THE FULL RULE, PLEASE VISIT THE DEPARTMENT'S WEBSITE:
[HTTPS://WWW.TDHCA.STATE.TX.US/PMCDocs/SUBCHAPTERF.PDF](https://www.tdhca.state.tx.us/pmcdocs/subchapterf.pdf)



TEXAS
 DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS