

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
COMPLIANCE GUIDANCE RELATED TO COVID-19**

Stimulus Pay and Unemployment Compensation:

On April 16, 2020, HUD's Office of Multifamily Housing Programs provided the following guidance:

Q4: Are household payments under the CARES Act reportable as tenant income?

A: Household stimulus payments of up to \$1,200 (which is technically an advance tax credit) and the temporary \$600 per week federal enhancement to unemployment insurance provided by the CARES Act are not to be included in calculations of income. However, HUD notes that regular payments of unemployment insurance (issued by the state) are treated as income, as is customary under program rules.

On June 17, 2020, HUD's Office of Community Planning and Development clarified that the temporary \$600 per week federal enhancement to unemployment insurance provided by the CARES Act does not need to be included as annual income under the HOME program. **Therefore, for the purposes of determining eligibility for all of the Department's multifamily programs, household stimulus payments and the temporary \$600 per week federal enhancement to unemployment insurance are excluded when determining eligibility.**

Additionally any "Lost Wages Supplemental Payment Assistance" provided by the Federal Emergency Management Agency (FEMA) that allows an extra \$300 per week (and an additional \$100 per week state match) for unemployment is specifically excluded under the Robert T. Stafford Disaster Relief and Emergency Assistance Act as a Federal exclusion of income in the HUD Handbook 4350.3.

Training: The Department has recorded an income determination training that has been posted to the Department's website: <https://www.tdhca.state.tx.us/pmcomp/presentations.htm>

Trainings done in partnership with the Texas Apartment Association will be conducted online.

Monitoring: Uniform Physical Condition Standards Inspections have been postponed. Although Internal Revenue Service Notice 2020-53 and 2021-12 provide relief, reviews of resident files will continue to be conducted through desk reviews.

Beginning November 2020, the Physical Inspections division is conducting modified inspections of some Housing Tax Credit developments. These inspections are limited to areas which can be inspected while adhering to safety protocols, and do not include occupied units or occupied common areas. If your development is selected for a modified inspection, you may opt-out without penalty. If you have any questions about this process, please contact Cody Campbell, Manager of Physical Inspections, at cody.campbell@tdhca.state.tx.us.

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The Department is required to conduct mid-construction and final construction inspections for Developments funded through the Multifamily Direct Loan Program. The scope of required final construction inspections may be modified to avoid entering occupied units. A follow up inspection may be conducted.

Final construction inspections for Developments not funded through the Multifamily Direct Loan Program are postponed at this time. If you have questions about your cost certification or obtaining Forms 8609, please contact the Development's asset manager. A list of asset managers and their regional assignments is available at: <https://www.tdhca.state.tx.us/asset-management/contacts.htm>

Corrective action deadlines: If you are in the corrective action period and need an extension, please make a request in writing to compliance.extensionrequest@tdhca.state.tx.us

Staff can grant extensions for up to 6 months if there is good cause. If the issue is related to noncompliance with the Housing Tax Credit program and required to be reported to the IRS on form 8823, in the absence of federal guidance, staff cannot provide a corrective action period of more than six months.

If the issue is not a matter that is required to be reported to the IRS on form 8823, staff may have some flexibility in extending corrective action deadlines further. Please explain in your request how COVID-19 is preventing the correction of the issue and the date that you believe you can resolve the matter and provide a response to the Department.

Supportive Services: On March 16, 2020, the Department suspended the requirement to provide supportive services that are social or recreational in nature or involve gatherings of more than 50 people. Since that time, federal, state and local governments have suggested further limiting the number of people that should be gathered together to 10 or less, and the Department's guidance is modified as federal, state or local governments change this guidance throughout the COVID-19 pandemic.

If your LURA requires services that are not social or recreational in nature, the Department urges you to find ways to safely continue service delivery. For example, if your property is to provide after school meals, to avoid gatherings of more than 10 people and practice social distancing, an option is to deliver food to households and leave it outside their door or set up a schedule to stagger the number of people that come for the service.

Reporting The Annual Owner's Compliance Reports (AOCR), Parts A, B, C and D and the Annual Owner's Financial Certification required by Treasury Regulation §1.42-5 has not been extended and is due April 30, 2021. **Update. Resident files:** TDHCA permits electronic records (and has prior to COVID-19). Applications, leases, verification of income and assets, and student status can all be completed electronically. Digital signatures on forms (both property management and household) are and have been acceptable. If you

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are not set up to complete paperwork electronically please use appropriate social distancing to get signatures and forms completed.

In accordance with IRS Notice 2020-23, the Department extended relief from completing income certifications between April 1, 2020, and July 15, 2020. Any initial certifications that were not performed during this time period must be completed as soon as possible after July 15, 2020.

IRS Notice 2021-12 extends relief from performing recertifications due between April 1, 2020, and September 30, 2021. The Department extends this relief to all Housing Tax Credit, State Housing Trust Fund and TCAP properties and for the requirement to complete the Annual Eligibility Certification for all Developments. Owners are not required to exercise this relief and are permitted to continue completing required recertifications.

The Department has received guidance from the Internal Revenue Service that the recertifications due between April 1, 2020, and September 30, 2021, are waived in their entirety. Contrary to the Department's July 9, 2020, guidance, it is not necessary to complete missed certifications as soon as possible after the relief period ends. Resume completing recertifications and completion of the Annual Eligibility Certification on October 1, 2021.

Example #1: A household moved into a mixed income project on June 1, 2019. Their recertification was due on June 1, 2020, and was not completed. The next certification is due June 1, 2022.

Example #2: A household moved into a 100% low income project on October 1, 2019. The Annual Eligibility Certification would normally be due on October 1, 2020. It is not necessary to complete the Annual Eligibility Certification until October 1, 2021.

HUD has provided an updated waiver on December 7, 2020 for income documentation for initial certifications and recertifications at HOME properties. The specific waiver language is:

Income Documentation

Requirement: Source Documentation for Income Determinations

Citations: 24 CFR 92.203(a)(1) and (2), 24 CFR 92.64(a) (Insular Areas)

Explanation: These sections of the HOME regulation require initial income determinations for HOME beneficiaries by examining source documents covering the most recent two months. 24 CFR 92.64(a) applies these requirements to Insular Areas.

Justification: This waiver permits the PJ to use self-certification of income, as provided at §92.203(a)(1)(ii), in lieu of source documentation to determine eligibility for HOME assistance of persons requiring *assistance where source*

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documentation does not accurately reflect current income and/or where social distancing measures make submission of source documentation unduly difficult. Many families affected by actions taken to reduce the spread of COVID-19, such as business closures resulting in loss of employment or lay-offs, will not have documentation that accurately reflects current income and will not be able to qualify for HOME assistance if the requirement remains effective. Additionally, the waiver is necessary to help PJs comply with national, state, or local health authorities' recommendations on social distancing to reduce the risk of spreading COVID-19.

Applicability: The waiver applies to individuals and families who are applying for admission to a HOME rental unit or a HOME tenant-based rental assistance, and individuals and families that are existing tenants of HOME rental projects or current recipients of tenant-based rental assistance, who would be placed at risk or experience hardship by submission of source documentation, as determined by the PJ, in consideration of national, state or local health authorities' COVID-19 guidelines.

If a PJ chooses to use this waiver availability, the PJ must ensure that self-certified income takes into consideration all income, including any unemployment and emergency benefits. *However, the Department determined that the FPUC benefit was temporary in nature and excluded from income under 24 CFR 5.609(c)(9) and the Lost Wages Supplemental Payment Assistance is excluded from income under the Stafford Act, in accordance with 24 CFR 5.609(c)(17). The FPUC benefit and Lost Wage Supplemental Payment Assistance therefore must not be taken into consideration when determining eligibility or level of TBRA subsidy under the HOME program. In addition, the PJ may choose to redetermine income, according to its policy, in cases where the income self-certification included the FPUC benefit and/or Lost Wages Supplement Payment Assistance and resulted in the ineligibility of an applicant. The PJ must conduct rent and income reviews in accordance with 24 CFR 92.203(a)(1) and (2) within a 120 days after the end of the extended waiver period. The PJ must include tenant income self-certifications in each project file. This waiver remains in effect through September 30, 2021.*

Income Documentation for Tenants of a HOME Project in a Sixth year of the Period of Affordability

Requirement: Source Documentation for Income Re-examinations

Citations: 24 CFR 92.252(h), 24 CFR 92.64(a) (Insular Areas)

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Explanation: These sections of the regulation require re-examination of income of each tenant using source documentation in accordance with §92.203(a)(1)(i) in every sixth year of the affordability period where an owner of multifamily project with an affordability period of 10 years or more re-examines tenant's annual income through a statement and certification in accordance with § 92.203(a)(1)(ii). 24 CFR 92.64(a) applies these requirements to Insular Areas.

Justification: This waiver permits the use of self-certification of income, as provided at §92.203(a)(1)(ii), in lieu of source documentation to re-examine the income of tenants residing in a HOME multifamily project with a period of affordability of 10 years or more, if the reexamination of tenant income required in every sixth year of the project's affordability occurs on or before September 30, 2021. This waiver is necessary because source documentation may not accurately reflect the current income of existing tenants and/or social distancing measures may make submission of source documentation unduly difficult. Many families affected by actions taken to reduce the spread of COVID-19, such as business closures resulting in a loss of employment or lay-offs, will not have documentation that accurately reflects current income and will not be able to qualify for HOME assistance if the requirement remains in effect. Additionally the waiver is necessary to help PJs comply with national, state, or local health authorities' recommendations on social distancing to reduce the risk of spreading COVID-19.

Applicability: This waiver applies to an owner of a HOME multifamily rental project with a period of affordability of 10 years or more to use self-certification of income, as provided at §92.203(a)(1)(ii), if a reexamination of tenant income required in every sixth year of the project's period of affordability occurs on or before September 30, 2021. This is to accommodate a tenant with sources documentation that does not accurately reflect current income and/or where individuals and families would be placed at risk or experience hardship by submission of source documentation to the owner, as determined by the PJ, in consideration of national, state, local health authorities COVID-19 guidelines. This waiver remains in effect until September 30, 2021.

If you are a HOME development and would like to take advantage of these waivers, prior written permission is required. Please submit your request to Wendy Quackenbush at wendy.quackenbush@tdhca.state.tx.us

HUD has made available a sample self-certification of annual income for that can be found on this page of the Department's website: <https://www.tdhca.state.tx.us/pmcomp/forms.htm>

Utility Allowances: The Department cannot think of any reason utility allowance requests, approvals or implementation of new allowances would be disrupted by COVID-19 at this time. If you are in need of guidance about utility allowances related to COVID-19 please contact Wendy Quackenbush at wendy.quackenbush@tdhca.state.tx.us Families will likely be using increased utilities as schools are closed and people are staying home more. If your households need assistance paying higher utility bills please refer them to this section of the Department's website: <https://www.tdhca.state.tx.us/texans.htm> where they can identify the provider of the Low Income Home Energy Assistance, Comprehensive Energy Assistance Program provider in your area.

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Income and rent limits: The Department's income and rent limit tool has been updated with the 2020 limits for the Multifamily tax subsidy programs, the Texas Housing Trust fund and all Multifamily Direct Loan programs. Income limits for the Section 811 PRA program are available at the following link: <https://www.tdhca.state.tx.us/section-811-pra/participating-properties.htm>.

Evictions: TDHCA views the CARES Act as imposing a 120-day moratorium on tenant eviction filings and charging late fees for properties covered under the Violence Against Women Act (VAWA), particularly that such developments may not:

1. Make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or
2. Charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.

In addition, developments may not require tenants to vacate sooner than 30 days after providing notice or issue a notice to vacate until after July 24, 2020. If multifamily development owners have questions about the CARES Act, VAWA, or any other federal or state requirements, they are encouraged to contact their legal counsel.

This applies to, but is not limited to, developments that have utilized 9% or 4% Low Income Housing Tax Credits, 811 PRA, Housing Choice Vouchers, Emergency Solutions Grants, and HOME.

The Department is aware that some counties are halting evictions. Remember that evictions for other than good cause are prohibited and to follow the guidance and prohibitions of your local area.

Other federal laws: At this time, the Department is not aware of any waivers of the requirements of the Federal Fair Housing Act, the Violence Against Women Act, Section 504 of the Rehabilitation Act, or the Americans with Disabilities Act. Your property must continue to make reasonable accommodations and process transfer requests related to disabilities or VAWA protections.

Vacant Units: Housing Tax Credit and Tax Exempt Bond properties may offer to lease vacant program units to medical personnel and other essential workers. **Prior approval is required.**

No existing households may be evicted or otherwise have their occupancy terminated solely to provide housing for medical personnel or other essential workers. Units leased to medical personnel or other essential workers must be rent restricted at the rent limit set by the minimum set aside. Income limits and student rules do not apply to medical personnel and other essential workers between April 1, 2020 and September 30, 2021.

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If you would like to lease some units to medical personnel and other essential workers, please upload the “Request to Provide Housing to Medical Personnel and Other Essential Workers” form to your CMTS account to the attention of Jasmine Harris. The form is available on this section of the Department’s website: <https://www.tdhca.state.tx.us/pmcomp/casualty-loss/emergency-housing.htm>

To demonstrate that the units is occupied by medical personnel and other essential workers, owners must obtain a rental application, a lease and the “TDHCA Medical Personnel and Other Essential worker Certification form”. The required form is available on this page of the Department’s website: <https://www.tdhca.state.tx.us/pmcomp/casualty-loss/emergency-housing.htm>

If your development is in the first year of the credit period, units occupied by medical personnel and other essential workers are treated as low-income units for the purposes of determining the project’s qualified basis and for meeting the minimum set aside.

If your development has completed the first year of the credit period, units occupied by medical personnel and other essential workers retain the status it had immediately before that occupancy.

On the Unit Status Report, units occupied by medical personnel and other essential workers should be noted as such by indicating “MPEW” after their last name.

On October 1, 2021, program units occupied by medical personnel and other essential workers must be certified as low income or vacated and made available for occupancy by low-income households.

Owners must review Revenue Procedure 2014-49 or 2014-50 as applicable and IRS Notice 2020-53 and 2021-12 in their entireties to avoid noncompliance. Leasing units to medical personnel and other essential workers is an option only for Housing Tax Credit and Tax Exempt Bond units. Multifamily Direct Loan units cannot be leased to medical personnel and other essential workers (unless they otherwise meet all program requirements.)

Casualty Loss: If a low-income building has suffered a casualty loss and the reasonable period to restore by reconstruction or replacement ends on or after April 1, 2020, then the last day of the Reasonable Restoration is postponed by a period of one year from the original end date but not beyond December 31, 2021, the last day for the Owner of the building to restore the loss by reconstruction or replacement is postponed to December 31, 2021.

Common Areas and Amenities: If an amenity or common area in a Housing Tax Credit building or project is temporarily unavailable or closed during some or all of the period from April 1, 2020 to September 30, 2021, in response to the COVID-19 pandemic, and not because of other noncompliance for § 42 purposes, this temporary closure does not result in a reduction of the eligible basis of the building. **However, the Department requires laundry facilities to continue to remain open and available to residents.**

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