

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
**TDHCA Governing Board Approved Draft of  
10 TAC Chapter 8, Project Rental Assistance Program Rule**

**Disclaimer**

Attached is a draft of proposed 10 TAC Chapter 8, Project Rental Assistance Program Rule that was approved by the TDHCA Governing Board on January 13, 2022. This document, including its preamble, is expected to be published in the January 28, 2022 edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment. The version herein is informational only and should not be relied upon as the basis for public comment. The document attached reflects all changes proposed in track changes to facilitate review. The *Texas Register* can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>

**Public Comment**

**Public Comment Period:**

**Starts: 8:00 a.m. Austin local time on January 28, 2022**

**Ends: 5:00 p.m. Austin local time February 28, 2022**

Comments received after 5:00 p.m. Austin local time on February 28, 2022 will not be accepted.

Written comments may be submitted, in hard copy or electronic formats to:

Texas Department of Housing and Community Affairs

Attn: Spencer Duran

Rules Comments

P.O. Box 13941

Austin, Texas 78711-3941

Email: [spencer.duran@tdhca.state.tx.us](mailto:spencer.duran@tdhca.state.tx.us) or [811info@tdhca.state.t.x.us](mailto:811info@tdhca.state.t.x.us)

Written comments may be submitted in hard copy or email formats within the designated public comment period.

Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

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## **Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 8, the Project Rental Assistance Rule**

The Texas Department of Housing and Community Affairs (the Department) proposed the repeal of 10 TAC Chapter 8, Project Rental Assistance Program Rule, §§ 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, and 8.7. The purpose of the proposed repeal is to provide clarification of the existing rule through new rulemaking action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed 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 Section 811 PRA Program.

2. The proposed 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 workload to a degree that any existing employee positions are eliminated.

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, administration of the Section 811 Program.

7. The proposed 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 proposed repeal and determined that the proposed 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 proposed repeal does not contemplate nor authorize a taking by the Department; therefore no Takings Impact Assessment is required.

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

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed 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 proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be increased clarity and improved access to the 811 Program. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the proposed 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 28, 2022, through February 28, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Spencer Duran, Director of Section 811 Program, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [spencer.duran@tdhca.state.tx.us](mailto:spencer.duran@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time February 28, 2022.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

- §8.1 Purpose
- §8.2 Definitions
- §8.3 Participation as a Proposed Development
- §8.4 Qualification Requirements for Existing Developments
- §8.5 List of Qualified Existing Developments
- §8.6 Disposition of Conflicts with other Department Rules
- §8.7 Program Regulations and Requirements

## **Attachment B: Preamble, including required analysis, for proposed new 10 TAC Chapter 8, the Project Rental Assistance Rule**

The Texas Department of Housing and Community Affairs (the Department) proposed new 10 TAC Chapter 8, Project Rental Assistance Program Rule, §§ 8.1, 8.2, 8.3, 8.4, and 8.6. The purpose of the proposed action is to provide clarification of the existing rule through new rulemaking action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect, the rule 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 Section 811 PRA Program.

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, administration of the Section 811 Program.

7. The proposed 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 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 proposed new rule and determined that the new rule 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 proposed 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 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 new rule is in effect, the public benefit anticipated as a result of the new rule would be increased clarity and improved access to the 811 Program. There will not be economic costs to individuals required to comply with the new rule.

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 rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 28, 2022, through February 28, 2022, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Spencer Duran, Director of Section 811 Program, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [spencer.duran@tdhca.state.tx.us](mailto:spencer.duran@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time February 28, 2022.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

## TITLE 10 COMMUNITY DEVELOPMENT

### PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 8, PROJECT RENTAL ASSISTANCE PROGRAM RULE

##### §8.1 Purpose

The purpose of the Section 811 Project Rental Assistance Program ("Section 811 PRA Program") is to provide federally funded project-based rental assistance to participating multifamily properties on behalf of extremely low-income persons with disabilities linked with long term services provided through a formalized partnership and other state of Texas agencies that provide health and human services.

##### §8.2 Definitions

Terms defined in this chapter apply to the 811 PRA Program administered by the Department. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning ascribed to them in or for the purposes of the Program Requirements or in Chapters 1, 2, 10, or 11 of the Texas Administrative Code, as applicable.

**(1) Assisted Units**--rental units made available to or occupied by an Eligible Tenant in Eligible Multifamily Properties receiving assistance under 42 U.S.C. §8013(b)(3)(A).

**(2) Contract Rent**--the total amount of rent specified in the Rental Assistance Contract (RAC) as payable to the Owner for the Assisted Unit.

**(3) Cooperative Agreement**--the Section 811 Project Rental Assistance Program Cooperative Agreement including all exhibits and attachments thereto, by and between the Department as "Grantee" and HUD, entered into as a condition to and in consideration of ~~TDHCA's~~ the Department's participation in the Section 811 Project Rental Assistance Program.

**(4) Eligible Applicant**--an Extremely Low-Income Person with Disabilities, between the ages of 18 and ~~62~~ 61 ~~and who meets the requirements of the Target Population,~~ and Extremely Low Income Families, which includes at least one Person with a Disability, who is between the ages of 18 and ~~62~~ 61 ~~and who meets the requirements of the Target Population,~~ at the time of admission. The Person with a Disability must be eligible for community-based, long-term care services as provided through Medicaid waivers, Medicaid state plan options, comparable state funded services or other appropriate services related to the type of disability(ies) targeted under the Inter-Agency Partnership Agreement.

**(5) Eligible Families or Eligible Family**--shall have the same meaning as Eligible Tenant.

**(6) Eligible Multifamily Property or Eligible Multifamily Properties**--any new or existing property owned by a private or public nonprofit, or for-profit entity with at least five (5) housing units and as specifically identified in a Participation Agreement.

**(7) Eligible Tenant**--an Eligible Applicant, also referred to as an Eligible Family, who is being referred to available Assisted Units in accordance with the Inter-Agency Partnership Agreement and for whom community-based, long-term care services are available at time of referral. Such services are voluntary; referral shall not be based on willingness to accept such services. Eligible Tenant also means an Extremely Low-Income Person with a Disability, between the ages of 18 and ~~62-61~~ at the time of referral, who meets the requirements of the Target Population and Extremely Low-Income Families, which includes at least one Person with a Disability, who is between the ages of 18 and ~~62-61~~ at the time of referral and who meets the requirements of the Target Population. ~~Also referred to as an Eligible Family.~~

**(8) Enterprise Income Verification System (EIV)**--a HUD web-based application which provides Owners with employment, unemployment and Social Security benefit information for tenants participating in U.S. Department of Housing and Urban Development assisted housing programs.

**(98) Existing Development**--for purposes of 811 PRA Program participation, a property within the ~~Department's Multifamily Program~~ Department's Applicant's portfolio that is not actively applying for multifamily ~~fund award~~ at the time, and is being considered to serve as the Eligible Multifamily Property as part of an Applicant's or an Affiliate's current multifamily application. For full applications made on or after January 1, 2018, Existing Developments do not include properties for which the only Ownership interest is through the participation of a Historically Underutilized Business, which owns less than 50% of an Existing Development.

**(109) Extremely Low-Income**--a household whose annual income does not exceed thirty percent (30%) of the median income for the area, as determined by HUD's Extremely-Low Income Limit: families whose incomes do not exceed the higher of The Federal Poverty Level; or 30 percent of Area Median Income-, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than thirty percent (30%) of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes. HUD's income exclusions, as defined under 24 CFR §5.609 (as amended), apply in determining income eligibility and Eligible Tenant's rent. ~~a household whose annual income does not exceed thirty percent (30%) of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than thirty percent (30%) of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes. HUD's income exclusions, as defined under 24 CFR §5.609 (as amended), apply in determining income eligibility and Eligible Tenant's rent.~~

**(101) HUD**--the U. S. Department of Housing and Urban Development.

**(124) Inter-Agency Partnership Agreement**--the Inter-Agency Partnership Agreement between TDHCA and State Health and Human Services Medicaid Agency(ies) that provides a formal structure for collaboration to participate in TDHCA's Section 811 Project Rental Assistance

Program to develop permanent supportive housing for Extremely Low-Income Persons with Disabilities.

**(132) Multifamily Rules**--Chapters 10, 11, and/or 13 of this Title, as applicable.

**(143) Owner**--the entity that owns the Eligible Multifamily Property. Additionally, Owner means the entity named as such in the Property Agreement, its successors, and assigns.

**(145) Owner & Property Management Manual**--a set of guidelines designed to be an implementation tool for the Program, which allows the Owner and the Owner's designated property manager to better administer the Program, which also includes adherence to the "Owner Occupancy Requirements" set forth in Section IV of HUD Notice H 2013-24.

**(165) Participation Agreement**--~~(also known as Property Agreement)~~ that agreement to be executed by the Owner and the Department reflecting the agreement of participation in the Section 811 Project Rental Assistance Program with regards to a given number of assisted housing units on a certain multifamily rental housing property~~ies~~.

**(176) Persons with Disability or Persons with Disabilities**--shall have the same meaning as defined under 42 U.S.C. §8013(k)(2) and 24 CFR §891.305.

**(187) Program**--~~TDHCA's~~The Department's Section 811 Project Rental Assistance Program under Section 811 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. §8013(b)(3)(A)), as amended by the Frank Melville Supportive Housing Investment Act of 2010 (Public Law 111-374) designed to provide permanent supportive housing for Extremely Low-Income persons with disabilities receiving long term supports and services in the community.

**(198) Program Requirements**--means but is not limited to: the Participation Agreement ~~(sometimes called the Property Agreement)~~; Tex. Gov't Code Ann. Chapter 2306; the applicable state program rules under Title 10, ~~Chapters 1, 2, and 8~~Parts 1, 2, and 8 of the Texas Administrative Code; the Owner & Property Management ~~Manual~~Manual; the Cooperative Agreement~~Part I of the Rental Assistance Contract attached as Exhibit 8 to the Cooperative Agreement; Part II of the Rental Assistance Contract attached as Exhibit 9 to the Cooperative Agreement; the Use Agreement; Program Guidelines attached as Exhibit 5 to the Cooperative Agreement~~; HUD Notice 2013-24 issued on August 23, 2013; Section 811 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. §8013(b)(3)(A)), as amended by the Frank Melville Supportive Housing Act of 2010 (Public Law 111-374; Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55); Notice of Funding Availability (NOFA) for Fiscal Year 2012 Section 811 Project Rental Assistance Program published on May 15, 2012; ~~Notice of Funding Availability~~ (NOFA) for Fiscal Years 2013 Section 811 Project Rental Assistance Program published on March 4, 2014, for Fiscal Year 2019 Project Rental Assistance Section 811 Program for Persons with Disabilities published on October 8, 2019, and Technical Corrections to NOFA; and all laws applicable to the Program.

**(2019) Proposed Development**--the Development proposes to be awarded funds or an allocation as part of a Multifamily application.

**(210) Rental Assistance Contract (RAC)**--the HUD contract (form HUD-92235-PRA and form HUD-92237-PRA) by and between ~~TDHCA~~ the Department and the Owner of the Eligible Multifamily Property which sets forth additional terms, conditions and duties of the Parties with respect to the Eligible Multifamily Property and the Assisted Units.

**(221) Rental Assistance Payments**--the payment made by ~~TDHCA~~ the Department to Owners as provided in the Rental Assistance Contract. Where the Assisted Units are leased to an Eligible Tenant, the payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Eligible Tenant when the Utility Allowance is greater than the Total Tenant Payment. A vacancy payment may be made to the Owner when an Assisted Units is vacant, in accordance with the RAC and other Program Requirements.

**(232) Target Population**--the specific group or groups of Eligible Applicants and Eligible Tenants described in ~~TDHCA's~~ the Department's Inter-Agency Partnership Agreement who are intended to be solely served or to be prioritized under ~~TDHCA's~~ the Department's Program.

**(243) Tenant Rent**--the rent as defined in 24 CFR Part 5.

**(254) Total Tenant Payment**--the payment as defined in 24 CFR Part 5.

**(265) Use Agreement**--an agreement by and between ~~TDHCA~~ the Department and Owner in the form prescribed by HUD under Exhibit 10 of the Cooperative Agreement (form HUD-92238-PRA) encumbering the Eligible Multifamily Property with restrictions and guidelines under the Program for operating Assisted Units during a thirty (30) year period, to be recorded in the official public property records in the county where the Eligible Multifamily Property is located.

### **§8.3 Participation as a Proposed Development**

**(a)** To the extent that Applications under ~~Department's rules or NOFAs~~ Multifamily Rules allow for and/or require use of a Proposed Development to participate in the 811 PRA Program, the Proposed Development must satisfy the following criteria:

**(1)** Unless the Development is also proposing to use any federal funding or has received federal funding after 1978, the Development must not be originally constructed before 1978;

**(2)** The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and

**(3)** No new construction of structures shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation

Developments that have previously received HUD funding or obtained HUD insurance do not have to follow subparagraphs (A) - (C) of this paragraph. Except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, existing structures are eligible in these areas, but must meet the following requirements:

(A) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.

(B) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(C) Existing structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.

**(b)** The following requirements must be satisfied for the Units that participate in the 811 PRA Program. Failure for a Unit to meet these requirements does not make the entire Development ineligible, rather only those Units.

**(1)** Units in the Development are not eligible for Section 811 assistance if they have an existing or proposed project-based or an operating housing subsidy attached to them or if they have received any form of long-term operating subsidy within ~~the last~~ six months prior to receiving Section 811 Rental Assistance Payments.

**(2)** Units with an existing or proposed 62 or up age restriction are not eligible.

**(3)** Units with an existing or proposed limitation for persons with disabilities are not eligible. A Development having a preference for Persons with Disabilities, or a use restriction for Special Needs Populations, which could include but is not limited to Persons with Disabilities, is not a Unit limitation for purposes of this item.

**(4)** Units with an existing or proposed occupancy restriction for households at 30% or below are not eligible, unless there are no other Units at the Development.

**(c)** Developments cannot exceed the integration requirements of the Department and HUD. Properties that are exempt from the Department's Integrated Housing Rule at §1.15 of this Title are not exempt from HUD's Integration Requirement maximum of 25%. The maximum number of units a Development can exclusively set aside ~~(restrict)~~, or have an occupancy preference for persons with disabilities, including Section 811 PRA units is 25% of the total units in the Eligible Multifamily Property.

**(d)** Section 811 PRA units must be dispersed throughout the Development.

#### **§8.4 Qualification Requirements for Existing Developments**

Eligible Existing Developments must meet all of the requirements in §8.3 of this chapter. In addition, the Existing Development must meet the following requirements:

- (1) The Development received an award (tax credit, direct loan, etc.) under a ~~TDHCA~~ Department administered program in or after 2002, or has been otherwise approved by the Department in writing;
- (2) The Development has at least 5 housing units;
- (3) For Developments that were placed in service on or before January 1, 2017, the most current vacancy report as reflected in CMTS evidences that the Development maintained at least 85% ~~percent~~ physical occupancy for a period of at least 3 consecutive months.;
- (4) For Developments that have received a UPCS inspection, the Development received a UPCS score of at least 80 on its most recent ~~TDHCA~~Department, REAC inspection and all compliance issues associated with that inspection have been resolved;
- (5) The Development is operating in accordance with the accessibility requirements of Section 504, the Rehabilitation Act of 1973 (29 U.S.C. Section 794), as specified under 24 C.F.R. Part 8, Subpart C, or operating under the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" Federal Register 79 FR 29671; and
- (6) The Development is not Transitional Housing as defined in the 2018 Uniform Multifamily Rules.

#### ~~§8.5~~ **List of Qualified Existing Developments**

~~A proposed list of Existing Developments within the Department's portfolio that satisfy the requirements of §8.4 of this chapter will be released on the Department's website no later than November 1, and a final list will be posted by December 15 of each year. If either date falls on a weekend or holiday, the list will be released on the next business day.~~

#### ~~§8.56~~ **Disposition of Conflicts with other Department Rules**

To the extent that any conflicts arise between this rule and the rules provided in Chapter 1, Administration, Chapter 2 Enforcement, Chapter 10, Uniform Multifamily Rules, Chapter 11, Qualified Allocation Plan, and Chapter 13, Multifamily Direct Loan Rule, federal requirements will first prevail, after which the requirements of the other Multifamily Rules will take precedence.

#### ~~§8.67~~ **Program Regulations and Requirements**

(a) Participation in the 811 PRA Program is encouraged and may be incentivized through the Department's ~~Multifamily Rules~~Rules and NOFAs. Once committed in the Multifamily Application, a Development must not accept a fund source that would prevent it from participating in the 811 PRA Program.

**(b)** An Existing Development that is already participating in the 811 PRA Program is eligible to have an additional commitment of 811 PRA Units as long as the integrated housing requirements as noted in §8.3(c) of this chapter (relating to Participation as a Proposed Development) are not violated.

**(c)** The types (e.g., accessible, one bedroom, first floor, etc.) and the specific number of Assisted Units (e.g., units 101, 201, etc.) will be "floating" (flexible) and dependent on the needs of the Department and the availability of the Assisted Units on the Eligible Multifamily Property.

**(d)** Occupancy Requirements. Owner is required to follow all applicable Program Requirements including but not limited to the following occupancy requirements found in HUD Handbook 4350.3 REV-1 and Housing Notices:

**(1)** H 2012-06, Enterprise Income Verification (EIV) System;

**(2)** H 2012-26, Extension of Housing Notice 2011-25, Enterprise Income Verification (EIV) & You Brochure-Requirements for Distribution and Use;

**(3)** H 2012-22, Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies;

**(4)** H 2012-11, State Registered Lifetime Sex Offenders in Federally Assisted Housing;

**(5)** H 2012-09, Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing; ~~or~~

**(6)** H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013, Additional Guidance for Multifamily Owners and Management Agents; or;

**(7)** H 2013-24, Section 811 Project Rental Assistance (PRA) Occupancy Interim Notice.

**(e) Use Agreements.** The Owner must execute the Use Agreement, ~~as found in Exhibit 10 of the Cooperative Agreement, before~~ at the execution of the RAC and comply with the following:

**(1)** Use Agreement ~~should~~ must be properly recorded according to local laws in the official public records on the Eligible Multifamily Property. The Owner shall provide to ~~TDHCA~~ the Department within 30 days of its receipt of the recorded Use Agreement, a copy of the executed, recorded Use Agreement.

**(2)** From the date the Property Agreement is entered into, the Owner shall not enter into any future use agreements or other subsidy programs that would diminish the number of Assisted Units that can be placed on the Eligible Multifamily Property.

**(3)** ~~TDHCA~~ The Department will enforce the provisions of the Use Agreement and RAC consistent with HUD's internal control and fraud monitoring requirements.

**(f) TRACS & EIV, Tenant Certifications, Reporting, Tenant Certifications and Compliance.**

**(1) TRACS & EIV Systems.** The Owner shall have appropriate ~~software~~ methods to access the Tenant Rental Assistance Certification System (TRACS) and the EIV System. The Owner shall be responsible for ensuring Program information is entered into these systems. TRACS is the only system by which an Eligible Multifamily Property can request Project Rental Assistance payments.

**(2) EIV Policies and Procedures.** Upon the execution of a RAC, the Owner must submit a copy of the property's EIV Policies and Procedures to the Department for review. If deficiencies are identified, the Owner will be required to correct and resubmit to the Department until all deficiencies have been properly corrected.

**(3) Outside Vendors.** The Owner has the right to refuse assistance from outside vendors hired by ~~TDHCA~~ the Department, but is still required to satisfy the Program Requirements.

**(4) Tenant Certification.** The Owner shall transmit Eligible Tenant's certification and recertification data, transmit voucher data, and communicate errors electronically in a form consistent with HUD reporting requirements for HUD Secure Systems.

**(5) Compliance Reviews.** The Department's Compliance Division will conduct a monitoring review in conjunction with the review of any other Department administered housing program layered with the Development. If the Development is layered with Housing Tax Credits and has exceeded the 15-year Federal Compliance Period, monitoring reviews of the Program will still be conducted at least every three years.

**(g) Tenant Selection and Screening.**

**(1) Target Population.** ~~TDHCA~~ The Department will screen Eligible Applicants for compliance with ~~TDHCA's~~ the Department's Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for ~~TDHCA's~~ the Department's Program. The Target Population may be revised, with HUD approval.

**(2) Tenant Selection Plan.** Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily Property's Tenant Selection Criteria, as defined by and in accordance with 10 TAC §10.610-8.02 ~~(relating to Written Policies and Procedures)~~, to ~~TDHCA~~ the Department for approval. ~~TDHCA will review the Tenant Selection Plan for compliance with existing Tenant Selection Criteria requirements, and consistent with TDHCA's Section 811 PRA Participant Selection Plan.~~

**(3) Tenant Eligibility and Selection.** The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with the following:

(A) The Owner must accept referrals of an Eligible Tenant from ~~TDHCA~~ the Department and retain copies of all applications received. The Owner is responsible for notifying the prospective Eligible Tenant and ~~TDHCA~~ the Department in writing regarding any denial of a prospective Eligible Tenant's application to an Eligible Multifamily Property and the reason for said denial. In the notice of denial, the Owner is responsible for notifying the Eligible Tenant of the right to dispute a denial, as outlined in HUD Handbook 4350.3. The results of the dispute must be sent to the Eligible Tenant and ~~TDHCA~~ the Department in writing.

(B) The Owner is responsible for determining age of the qualifying member of the Eligible Families. Eligible Family member must be at least 18 years of age and under the age of 62.

(C) The Owner is responsible for criminal background screening as required by HUD Handbook 4350.3.

(D) Verification of Income, Assets, and Deductions. The Owner is responsible for determining income of Eligible Families. The Owner shall verify income through the Enterprise Income Verification (EIV) System per HUD Handbook 4350.3 and HUD Notices. The Owner must certify an Eligible Tenant and Eligible Families at least annually and verify their income. Use of the EIV system as third party verification is not acceptable for the Housing Tax Credit or Multifamily Direct Loan Program. ~~If the household is also designated under the Housing Tax Credit or other Department administered program, the Owner must obtain third party, or first hand, verification of income in addition to using the EIV system.~~

#### **(h) Rental Assistance Contracts.**

**(1) Applicability.** If requested by ~~TDHCA~~ the Department, the Owner shall enter into a RAC. Not all properties with an Owner Participation Agreement will have a RAC, but when notified by ~~TDHCA~~ the Department, the Eligible Multifamily Property must enter into a RAC(s) and begin serving Eligible Applicants.

**(2) Notice.** The Department ~~TDHCA~~ will provide written notice to the Owner if and when it intends to enter into a RAC with the Owner.

**(3) Assisted Units.** The Department ~~TDHCA~~ will determine the number of Units (up to the maximum listed in the Property Agreement) to place in the RAC(s) which may be fewer than the number of Units identified in the Property Agreement.

**(4) The Department** ~~TDHCA~~ will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for fewer units than the number committed in the Participation Agreement.

**(5)** If no additional applicants are referred to the Development, the Department may begin a RAC amendment to reduce the number of Assisted Units. An Owner who has an amended, executed RAC must continue to notify the Department of units that become vacant that are committed under the Agreement.~~If no additional applicants are referred to the property, the RAC may be amended to reduce the number of Assisted Units. Owners who have an executed RAC must continue to notify TDHCA of any vacancies for units not under a RAC if additional units were committed under the Agreement. For instance, if the Owner has committed 10 units under the Agreement and only has a RAC for five Assisted Units, the Owner must continue to notify TDHCA of all vacancies until there is a RAC for 10 Assisted Units.~~

**(6) Amendments.** The Owner agrees to amend the RAC(s) upon request of the Department~~TDHCA~~. Some examples are amendments that may either increase or decrease the total number of Assisted Units or increase or decrease the associated bedroom sizes; multiple amendments to the RAC may occur over time. The total number of Assisted Units in the RAC will not exceed the number of Assisted Units committed in the Participation Agreement, unless by request of the Owner.

**(7) Contract Term.** The Department~~TDHCA~~ will specify the effective date of the RAC. During the first year of the RAC and with approval from HUD, the Owner may request to align the anniversary date of the RAC with existing federal or state housing programs layered on the Eligible Multifamily Property.

**(8) Rent Increase.** Owners must submit a written request to the Department ~~TDHCA~~ 30 days prior to the anniversary date of the RAC to request an annual increase.

**(9) Utility Allowance.** The RAC will identify the ~~TD~~Department~~HCA~~ approved Utility Allowance ~~being used for the Assisted Units for the Eligible Multifamily Property.~~ The Owner must notify the Department ~~TDHCA~~ if there are changes to the Utility Allowance calculation methodology being used.

**(10) Termination.** Although the Department ~~TDHCA~~ has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law.

**(11) Foreclosure of Eligible Multifamily Property.** Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law:

(A) The RAC shall be transferred to new owner by contractual agreement or by the new owner's consent to comply with the RAC, as applicable;

(B) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and

(C) Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in 10 TAC §10.406, (as amended), regarding Ownership Transfer requests.

**(i) Advertising and Affirmative Marketing.**

**(1) Advertising Materials.** Upon the execution of the Property Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including but not limited to:

(A) Depictions of the units including floor plans;

(B) Brochures;

(C) Tenant selection criteria;

(D) House rules;

(E) Number and size of available units;

(F) Number of units with accessible features (including, but not limited to units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act);

(G) Documentation on access to transportation and commercial facilities; and

(H) A description of onsite amenities.

**(2) Affirmative Marketing.** ~~The Department TDHCA~~ and its service partners ~~will be~~ responsible for affirmatively marketing the Program to Eligible Applicants.

**(3)** At any time, ~~TDHCA~~ the Department may choose to advertise the Eligible Multifamily Property, even if the Eligible Multifamily Property has not yet entered into a RAC.

**(j) Leasing Activities.**

**(1) Segregation of Assisted Units.** The Owner must take actions or adopt procedures to ensure that the Assisted Units are not segregated to one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.

**(2) Form of Lease.** The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement and any Department approved Addendums, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.

**(3) Communication.** Owners are required to document in writing all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.

**(4) Lease Renewals and Changes.** The Owner must notify the Department ~~TDHCA~~ of renewals of leases with Eligible Families and any changes to the terms of the lease.

**(5) Development Policies.** Upon the execution of the RAC, an Owner is required to submit a copy of the Development Policies (House Rules) to the Department for review. If deficiencies are noted, the Development will be required to correct and resubmit to the Department until all deficiencies have been properly corrected. The Owner is required to send a copy of amendments to the House Rules to the Department before implementing changes.

**(k) Rent.**

**(1) Tenant Rent Payment.** ~~The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment.~~ The Owner will determine the Tenant Rent payment of the Eligible Tenant, based on HUD Handbook 4350.3 and HUD Notices, and is responsible for collecting the Tenant Rent payment.

**(2) Utility Reimbursement.** ~~The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment no later than the 5<sup>th</sup> day of each month, beginning 30 days after initial move in.~~

**(3) Rent Increase.** Owner must provide the Eligible Tenant with at least 30 days notice before increasing rent, in accordance with HUD Handbook 4350.3.

**(4) Rent Restrictions.** Owner will comply with the following rent restrictions:

(A) ~~If the a Unit at the Development has a TDHCA-Department enforced rent restriction that is equal to or lower than Fair Market Rent (FMR), the initial rent is the maximum TDHCA-Department enforced rent restriction at the Development for that Unit, not to exceed the 60% Area Median Family Income limit.~~

(B) ~~If there is no existing TDHCA-Department enforced rent restriction on the Unit, or the existing TDHCA-Department enforced rent restriction is higher than FMR, the Department TDHCA will work with the Owner to conduct a market analysis of the Eligible Multifamily Property to support that a rent higher than FMR is attainable.~~

(C) ~~After the signing of the original RAC with the Department TDHCA, the Owner may request a new anniversary date to be consistent with other rent restrictions on the Eligible Multifamily Property allowed by the Department TDHCA.~~

(D) ~~After the signing of the original RAC, upon request from the Owner to the Department TDHCA, Rents may be adjusted on the anniversary date of the RAC.~~

(E) Adjustments may not result in higher rents charged for an Assisted Unit as compared to a non-assisted unit. The calculation or methodology used for the annual increase amount will be identified in the Eligible Multifamily Property's RAC.

(F) Owner can submit a request for a rent increase or to change the contract anniversary date using HUD Form 92458.

**(I) Vacancy; ~~Transfers; Eviction;~~ Household Changes; ~~Transfers; Eviction.~~**

**(1) Holding Assisted Units.** Once an Owner signs a RAC, the Eligible Multifamily Property must hold an available Assisted Unit for 60 days while a qualified Eligible Applicant applies for and moves into the Assisted Unit.

**(2) Notification.** Owner will notify the Department ~~TDHCA~~ of determination of ineligibility or the termination of any participating Eligible Families or any member of a participating Eligible Family.

**(3) Initial Lease-up.** Owners of a newly constructed, acquired and/or rehabilitated Eligible Multifamily Property must notify the Department ~~TDHCA~~ no later than 180 days before the Eligible Multifamily Property will be available for initial move-in. Failure to reserve the agreed upon number of Assisted Units for Eligible Families will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for Debarment.

**(4) Vacancy.** ~~Once a RAC is executed~~ Upon execution of the RAC, the Owner must notify the Department ~~TDHCA~~ of the any vacancy of any an Assisted Unit, including those that have not previously been occupied by an Eligible Tenant, at the Eligible Multifamily Property as soon as possible, not to exceed seven calendar days from when the Owner learns that an Assisted Unit will become available becomes aware of the eligible Unit availability. TDHCA will acknowledge receipt of the notice by responding to the Owner in writing within three business days from when the notice is received by the Department stating whether or not TDHCA will be accepting the available Unit, and making a subsequent referral for the Unit. Once the Department acknowledges receipt of the notice, the Department will notify the Owner within three business days if the Unit is acceptable and submit a referral. If the qualifying Eligible Tenant vacates the Assisted Unit, TDHCA ~~the Department~~ will determine if the remaining family member(s) is/are eligible for continued assistance from the Program.

**(5) Vacancy Payment.** ~~An Owner of an Eligible Multifamily Property that is not under a RAC may not receive a vacancy payment. TDHCA may make vacancy payments not to exceed 80% of the Contract Rent, during this time to the Eligible Multifamily Property, potentially for up to 60 days. After 60 days, the Owner may lease that Assisted Unit to a non-Eligible Tenant. The Department may provide vacancy payments that cannot exceed 80% of the Contract Rent for up to 60 days from the effective date of the RAC. After the 60 days, the Owner may lease the Assisted Unit to a non-Eligible Tenant. Developments without an executed RAC are not eligible for vacancy payments.~~

**(6) Household Changes; Transfers.** ~~Owners must notify TDHCA if the Eligible Tenant requests an Assisted Unit transfer.~~ Owner will notify the Department TDHCA of any household changes in family composition in an Assisted Unit within three business days. If the change results in the Assisted Unit being smaller or larger than is appropriate for the Eligible Family size, the Owner must refer to the Department's written policies regarding family size, unit transfers and waitlist management.

~~If the Owner determines that, because of a change in household size, an Assisted Unit is smaller than appropriate for the Eligible Tenant to which it is leased or that the Assisted Unit is larger than appropriate, the Owner shall refer to TDHCA's written policies regarding family size, unit transfers, and waitlist management. If the Department discovers the Eligible Family is ineligible for the size of the Assisted Unit, the Owner will be notified but Rental Assistance Payments will not be reduced or terminated until the Eligible Family can be transferred to an appropriate sized Assisted Unit. If the household is determined by TDHCA to no longer be eligible, TDHCA will notify the Owner. Rental Assistance Payments with respect to the Assisted Unit will not be reduced or terminated until the eligible household has been transferred to an appropriately sized Assisted Unit.~~

**(7) Transfers.** ~~Owners must notify the Department if the Eligible Family requests a transfer to another Assisted Unit within the Development. The Department will determine if the Eligible Family qualifies for the unit transfer, if the new Unit is eligible as an Assisted Unit and then notify the Owner. If the Department determines the Eligible Family is ineligible for the size of the Assisted Unit, the Department will notify the Owner and Rental Assistance Payments will not be reduced or terminated until the Eligible Family can be transferred to an appropriate sized Assisted Unit.~~

**(8) Notice to Vacate and Eviction and Nonrenewal.** Owners are required to notify the Department at least three calendar days prior to issuing a Notice to Vacate or a Notice of Non-Renewal to the Eligible Family. Notices must be compliance with HUD Handbook 4350.3 8-13(B)(2) and HUD Notices. A copy of the applicable Notice must be submitted via email to 811info@tdhca.state.tx.us.

(A) Owner is required to notify the Department within seven calendar days of when the Development is notified that the Eligible Family will vacate or in the event that the Eligible Family vacates without notice, upon discovery that the Assisted Unit is vacant. Notification of vacancy must be submitted to 811info@tdhca.state.tx.us.

(B) Upon move out, Owner must submit a move out disposition to the Department to ensure proper processing of the security deposit per HUD Handbook 4350.3 6-18.

by sending a copy of the applicable notice via email to the 811 TDHCA Point of Contact, as identified in the Owner Participation Agreement, at least three calendar days before providing a Notice to Vacate or a Notice of Nonrenewal to the Tenant.

**(m) Construction Standards, ~~Accessibility, Inspections, Repair and Maintenance, and Accessibility and Monitoring.~~**

**(1) Construction Standards.** Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to Uniform Physical Conditions Standards (UPCS) which are uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily Property, as more specifically described in 24 CFR §5.703, must be inspected in any physical inspection of the property.

**(2) Inspection.** Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.

**(3) Repair and Maintenance.** Owner will perform all repair and maintenance functions, including ordinary and extraordinary maintenance; will replace capital items; and will maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD and ~~TDHCA~~Department requirements.

**(4) Accessibility.** Owner must ensure that the Eligible Multifamily Property ~~will~~ meets or exceeds the accessibility requirements under 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act Design Manual; Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189), as implemented by the U.S. Department of Justice regulations at 28 CFR Parts 35 and 36; and the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

**(n) Owner Training.** The Owner is ~~obligated~~required to train all property management staff engaging with Eligible Families on the requirements of the Program. ~~The Owner will ensure that any new property management staff who is involved in serving Eligible Families review training materials found on the Program's webpage including webinars, manuals and checklists.~~ Owner training must include, but is not limited to the HUD Handbook 4350.3 and the Department's webpage at <https://www.tdhca.state.tx.us/section-811-pra/index.htm>.

**(o) Reporting Requirements.** Owner shall submit to ~~TDHCA~~the Department such reports on the operation and performance of the Program as required by the Participation Agreement and as may be required by ~~TDHCA~~the Department. Owner shall provide ~~TDHCA~~the Department with all reports necessary for ~~TDHCA's~~the Department's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

**(p) Environmental Laws and Regulations.**

**(1) Compliance with Laws and Regulations.** Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

(A) Hazardous Materials Transportation Act (49 U.S.C.A. §1801 et seq.);

(B) Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 et seq.);

(C) National Environmental Policy Act (42 U.S.C. §4321 et seq.) (NEPA);

(D) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 et seq.) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) (Superfund or SARA);

(E) Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 et seq.) (RCRA);

(F) Toxic Substances Control Act, (15 U.S.C.A. §2601 et seq.);

(G) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 et seq.);

(H) Clean Air Act (42 U.S.C.A. §7401 et seq.) (CAA);

(I) Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 et seq.) (Clean Water Act or CWA);

(J) Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;

(K) Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7);

(L) Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);

(M) County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);

(N) Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);

(O) Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and

(P) Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

**(2) Environmental Review.** The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 et seq.). Each such activity must have an environmental review completed and support documentation prepared in accordance with 10 TAC §110.305 complying with the NEPA, including screening for vapor encroachment following American Society for Testing and Materials (ASTM) 2600-10.

**(q) Labor Standards.**

**(1)** Owner understands and acknowledges that every contract for the construction (rehabilitation, adaptive reuse, or new construction) of housing that includes 12 or more units assisted with Program funds must contain provisions in accordance with Davis-Bacon Regulations.

**(2)** Owner understands and acknowledges that every contract involving the employment of mechanics and laborers of said construction shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§3701 to 3708), Copeland (Anti-Kickback) Act (40 U.S.C. §3145), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201, et seq.) and Davis-Bacon and Related Acts (40 U.S.C. §§3141 - 3148).

**(3)** Owner further acknowledges that if more housing units are constructed than the anticipated 11 or fewer housing units, it is the Owner's responsibility to ensure that all the housing units will comply with these federal labor standards and requirements under the Davis-Bacon Act as supplemented by the U.S. Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5).

**(4)** Owner also understands that structuring the proposed assistance for the rehabilitation or construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

**(5)** Construction contractors and subcontractors must comply with regulations issued under these federal acts described herein, with other federal laws, regulations pertaining to labor standards, including but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010).

**(r) Lead-Based Paint.** Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821 - 4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851 - 4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and

Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

**(s) Limited English Proficiency.** Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000, Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to insure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

**(t) Procurement of Recovered Materials.** Owner, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**(u) Drug-Free Workplace.** Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701, et seq.) and HUD's implementing regulations at 2 CFR Part 2429. Owner affirms by executing the Certification Regarding Drug-Free Workplace Requirements attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

**(v) ~~Nondiscrimination~~ Equal Opportunity, Fair Housing, Nondiscrimination, and Equal Access and Equal Opportunity.**

**(1) Equal Opportunity.** The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

**(2) Fair Housing Poster.** The Owner is required to place a fair housing poster (HUD-928.1 and HUD-9281.A) provided by ~~TDHCA~~ the Department in the leasing office, online, or anywhere else rental activities occur pursuant to 24 CFR §200.620(e). A copy of the poster in Spanish and in English can be found at <http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm>.

**(3) Nondiscrimination Laws.** Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any Program or activity funded in whole or in part with funds provided under this Agreement. Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189; 47 U.S.C. §§155, 201,

218 and 255) as implemented by U.S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 et seq.), as implemented by HUD at 24 CFR Part 100-115.

**(4) Affirmatively Furthering Fair Housing.** By Owner's execution of the Agreement and pursuant to Section 808(e)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.

**(5) Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking.** Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

**(w) Security of Confidential Information.**

**(1) Systems Confidentiality Protocols.** Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicant's and Eligible Tenant's personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants, Tenants or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicant's or Tenant's personal or financial information to any third party, except for authorized personnel in accordance with this Agreement.

**(2) Protected Health Information.** If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under 10 TAC §1.24, (relating to Protected Health Information), Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996), and the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164). ~~When accessing confidential information under this Program, Owner hereby acknowledges and further agrees to comply with the requirements under the Interagency Data Use Agreement between TDHCA and the Texas Health and Human Services Agencies dated October 1, 2015, as amended.~~

**(x) Real Property Acquisition and Relocation.** Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. §4601), and the government wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR Part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR Part 24, Subpart B. To be exempt from the

URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as voluntary acquisitions, the Owner must satisfy the applicable requirements of 49 CFR §24.101(b)(1) - (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR §24.101(b)(1) - (5). The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR Part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for temporary relocation under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR §24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance.

**(y) Dispute Resolution; Conflict Management.**

**(1) Eligible Tenant Disputes.** The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.

**(2) Agreement Disputes.** In accordance with Tex. Gov't Code 2306.082, it is ~~TDHCA's~~ the Department's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Tex. Gov't Code), to assist in the fair and expeditious resolution of internal and external disputes involving the ~~TDHCA~~ Department and the use of negotiated rulemaking procedures for the adoption of ~~TDHCA~~ Department rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by ~~TDHCA's~~ the Department's ex parte communications policy, ~~TDHCA~~ the Department encourages informal communications between ~~TDHCA~~ Department staff and the Owner, to exchange information and informally resolve disputes. ~~TDHCA~~ The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage ~~TDHCA~~ the Department in an ADR procedure, the Owner may send a proposal to ~~TDHCA's~~ the Department's Dispute Resolution Coordinator. For additional information on ~~TDHCA's~~ the Department's ADR policy, see ~~TDHCA's~~ the Department's Alternative Dispute Resolution and Negotiated Rulemaking at 10 TAC §1.17.

**(3) Conflict Management.** The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy.