

**TDHCA Board Approved *Draft* of 10 TAC Chapter 10,
Uniform Multifamily Rules, Subchapter H concerning
Income and Rent Limits**

Disclaimer

Attached is a draft of Chapter 10, Subchapter H – Income and Rent Limits that was approved by the TDHCA Governing Board on September 12, 2013. This draft incorporates changes made by the Board as a result of public comment at the meeting.

The rules are scheduled to be published in the October 4 edition of the *Texas Register* and will constitute the official version for purposes of public comment. The version herein should not be relied upon as the basis for public comment. The public comment period shall be October 4-November 4.

TITLE 10 COMMUNITY DEVELOPMENT
PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10 UNIFORM MULTIFAMILY RULES
SUBCHAPTER H INCOME AND RENT LIMITS

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§10.1001. Purpose.

The purpose of this subchapter is to codify the income and rent limits applicable to the multifamily programs administered by the Texas Department of Housing and Community Affairs (the "Department"). The Department may, but is not required to, calculate and provide income and rent limits for programs administered by the Department. Income and rent limits will be derived from data released by Federal agencies including the U.S. Department of Housing and Urban Development (HUD).

§10.1002. Definitions.

(a) Unless otherwise defined here terms have the meaning in §10.3 of this chapter (relating to Definitions), or federal or state law.

(b) Multifamily Tax Subsidy Program Imputed Income Limit--Using the income limits provided by HUD pursuant to §142(d), the imputed income limit is the income limitation which would apply to individuals occupying the unit if the number of individuals occupying the unit were as described in paragraphs (1) and (2) of this subsection:

- (1) In the case of a unit which does not have a separate bedroom, 1 individual; or
- (2) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

§10.1003. Tax Exempt Bond Developments. Properties

(a) Tax Exempt Bond Developments must use the Multifamily Tax Subsidy Program (MTSP) income limits released by HUD, generally, on an annual basis. The MTSP limit tables include:

- (1) The 50 percent and 60 percent Area Median Gross Income (AMGI) by household size.
- (2) In areas where the income limits did not decrease in 2007 and 2008 because of HUD's hold harmless policy, a HERA Special 50 percent and HERA Special 60 percent income limit by household size. These higher limits can only be used if at least one building in the Project was placed in service on or before December 31, 2008.

(b) If HUD releases a 30 percent, 40 percent, 60 percent or 80 percent income limit in the MTSP charts the Department will make that data available without any calculations. Otherwise, the following calculation will be used, without rounding, to determine additional income limits:

(1) To calculate the 30 percent AMGI, the 50 percent AMGI limit will be multiplied by .60 or 60 percent.

(2) To calculate the 40 percent AMGI, the 50 percent AMGI limit will be multiplied by .80 or 80 percent.

(3) To calculate the 60 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.2 or 120 percent.

(4) To calculate the 80 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.6 or 160 percent.

~~(c) (a)~~ The Land Use Restriction Agreement (LURA) for some, but not all, Tax Exempt Bond properties restricts the amount of rent the Development Owner is permitted to charge. If the LURA restricts ~~rents~~ rent limits, rent limits will be calculated in accordance with subsection §10.1004(d) of this subchapter. ~~rents will be calculated as 30 percent of the applicable Multifamily Tax Subsidy Program Imputed Income Limit, but never less than the limit taking into consideration the gross rent floor provided in accordance with Revenue Procedure 94-57.~~

~~(d) (b)~~ Tax Exempt Bond LURAs are hereby amended to be consistent with this section.

~~(e) (c)~~ The Department will make available a memorandum in a recordable form reflecting the applicable rent limits in accordance with this section and the legal description of the affected property. The owner of the property will bear any costs associated with recording such memorandum in the real property records for the county in which the property is located.

~~(f) (d)~~ Nothing in this section prevents a Development Owner from pursuing a Material Amendment to their LURA in accordance with the procedures found in §10.405 of this chapter (relating to Amendments and Extensions).

§10.1004. Housing Tax Credit Properties, TCAP, Exchange and HTF.

(a) Except for certain rural properties, Housing Tax Credit, TCAP, Exchange, and HTF Developments must use the Multifamily Tax Subsidy Program (MTSP) income limits released by HUD, generally, on an annual basis. The MTSP limit tables include:

(1) The 50 percent and 60 percent Area Median Gross Income (AMGI) by household size.

(2) In areas where the income limits did not decrease in 2007 and 2008 because of HUD's hold harmless policy, a HERA Special 50 percent and HERA Special 60 percent income limit by household size. These higher limits can only be used if at least one building in the Project (as defined on line 8b on Form 8609) was placed in service on or before December 31, 2008.

(b) If HUD releases a 30 percent, 40 percent, 60 percent or 80 percent income limit in the MTSP charts the Department will use that data. Otherwise, the following calculation will be used, without rounding, to determine additional income limits:

(1) To calculate the 30 percent AMGI, the 50 percent AMGI limit will be multiplied by .60 or 60 percent.

(2) To calculate the 40 percent AMGI, the 50 percent AMGI limit will be multiplied by .80 or 80 percent.

(3) To calculate the 60 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.2 or 120 percent.

(4) To calculate the 80 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.6 or 160 percent.

(c) Treatment of Rural Properties: §42(i)(8) of the Code permits certain Housing Tax Credit, Exchange and Tax Credit Assistance properties to use the national non-metropolitan median income limit when the area median gross income limit for a place is less than the national non-metropolitan median income. The Department will make the determination if a place qualifies as rural using the following process:

(1) When HUD releases MTSP income limits, the Compliance Division will review the most current listing of places on the Housing Tax Credit Site Demographic Characteristics Report found on the Department's website, which classifies each place as Rural or Urban. This determination is made in accordance with §10.3(a)(116) of this Chapter relating to Definitions. For the purposes of determining places that are eligible to use the rural income and rent limits, the following places will be removed from the list:

(A) Urban places.

(B) Places with a population in excess of 20,000 as of the 2010 census.

(C) Places with a population between 10,000 and 20,000 as of the 2010 census that are in a Metropolitan Statistical Area.

(D) Places that have an income limit greater than the national non-metropolitan income limit.

(2) All remaining places will be eligible to use the national non-metropolitan median income.

(3) Generally, HUD only releases the national non-metropolitan median income by household size for the 50 percent AMGI. The Department will calculate the additional income limits in accordance with subsection (b) of this section.

(4) The Department allows the use of rural income limits for HTF multifamily rental Developments that are considered rural using the process described in subparagraphs (A) through (D) of paragraph (1) of this section.

(d) Rent limits are a calculation of income limits and cannot exceed 30 percent of the applicable Imputed Income Limit. Rent limits are published by bedroom size and will be rounded down to the nearest dollar.

Example 1004(1): To calculate the 30 percent 1 bedroom rent limit:

(1) Determine the imputed income limited by multiplying the bedroom size by 1.5: 1 bedroom x 1.5 persons = 1.5.

(2) To calculate the 1.5 person income limit, average the 1 person and 2 person income limits: If the 1 person 30 percent income limit is \$12,000 and the 2 person 30 percent income limit is \$19,000, the imputed income limit would be \$15,500 ($\$12,000 + \$19,000 = \$31,000 / 2 = \$15,500$).

(3) To calculate the 30 percent 1 bedroom rent limit, multiply the imputed income limit of \$15,500 by 30 percent, then divide by 12 months and round down. In this example, the 30 percent 1 bedroom limit is \$387. ($\$15,500 \text{ times } 30 \text{ percent divided by } 12 = \$387.50 \text{ per month. Rounded down the limit is } \387).

Example 1004(2): to calculate the 50 percent 2 bedroom rent limit:

(1) Determine the imputed income limited to be calculated by multiplying the bedroom size by 1.5: 2 bedrooms x 1.5 persons = 3.

(2) The 3 person income limit is already published; for this example the applicable 3 person 50 percent income limit is \$27,000.

(3) To calculate the 50 percent 2 bedroom rent limit, multiply the \$27,000 by 30 percent, then divide by 12. In this example, the 50 percent 2 bedroom limit is \$675. (\$27,000 times 30 percent divided by 12 = \$675. No rounding is needed since the calculation yields a whole number.

(e) The Department releases rent limits assuming that the gross rent floor is set by the date the Housing Tax Credits were allocated.

(1) For a 9 percent Housing Tax Credit, the allocation date is the date the Carryover Agreement is signed by the Department.

(2) For a 4 percent Housing Tax Credit, the allocation date is the date of the Determination Notice.

(3) For TCAP, the allocation date is the date the accompanied credit was allocated.

(4) For Exchange, the allocation date is the effective date of the Subaward agreement.

(f) Revenue Procedure 94-57 permits, but does not require, owners to set the gross rent floor to the limits that are in effect at the time the Project (as defined on line 8b on Form 8609) places in service. However this election must be made prior to the Placed in Service Date. A Gross Rent Floor Election form is available on the Department's website. Unless otherwise elected, the initial date of allocation described in subsection (f) of this section will be used.

(g) For the HTF program, the date the LURA is executed is the date that sets the gross rent floor.

(h) Held Harmless Policy.

(1) In accordance with Section 3009 of the Housing and Economic Recovery Act of 2008, once a Project (as defined on line 8b on Form 8609) places in service, the income limits shall not be less than those in effect in the preceding year.

(2) Unless other guidance is received from the U.S. Treasury Department, in the event that a place no longer qualifies as rural, a Project that was placed in service prior to loss of rural designation can continue to use the rural income limits that were in effect before the place lost such designation. However, if in any subsequent year the rural income limits increase, the existing project cannot use the increased rural limits. <eti>Example 1004(3):<et> Project A was placed in service in 2010. At that time, the place was classified as Rural. In 2012 that place lost its rural designation. The rural income limits increased in 2013. Project A can continue to use the rural income limits in effect in 2012 but cannot use the higher 2013 rural income limits. Any Project that places in service in this place after the loss of the rural designation must use the applicable MTSP limits published by HUD.

§10.1005. HOME and NSP.

(a) HOME Developments must use the HOME Program Income and Rent Limits that are calculated annually by HUD's Office of Policy Development and Research (PDR). The limits are made available for

each Metropolitan Statistical Areas (MSA), Primary Metropolitan Statistical Areas (PMSA) and Area, District or County by State.

(1) Upon publication, the Department will determine which counties are in each MSA, PMSA, Area or District.

(2) Generally, PDR publishes income limits in tables identifying the following Area Median Gross Income (AMGI) by household size:

(A) 30 percent Limits;

(B) Very Low-Income Limits which are generally 50 percent of median income, but not less than the State non-metropolitan median which will be shown as the 50 percent limit in the Department's income limits;

(C) 60 percent Limits;

(D) Low-Income Limits which are generally 80 percent of the median income, but capped at the national median income with some exceptions which will be shown as the 80 percent limits in the Department's income limits.

(3) If not published, the Department will use the following methodology to calculate, without rounding, additional income limits from the HOME Program income limits released by PDR:

(A) To calculate the 30 percent AMGI, the 50 percent AMGI limit will be multiplied by .60 or 60 percent.

(B) To calculate the 40 percent AMGI, the 50 percent AMGI limit will be multiplied by .80 or 80 percent.

(C) To calculate the 60 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.2 or 120 percent.

(b) PDR publishes High and Low HOME rent limits by bedroom size.

(c) PDR does not publish a 30 percent or 40 percent rent limits that certain HOME Developments are required to use. These limits will be calculated using the same formulas described in subsection §10.1004 of this subchapter.

(d) In the event that PDR publishes rent limits after the HOME program income limits, the Department permits HOME Developments to delay the implementation of the 30 percent and 40 percent rent limits until the High and Low HOME rent limits must be used.

(e) NSP income limits are published annually by HUD for each county with tables identifying the 50 percent AMGI and 120 percent AMGI for household size. If not published, the Department will use the following methodology to calculate, without rounding, additional income limits from the HOME Program income limits released by HUD:

(1) To calculate the 30 percent AMGI, the 50 percent AMGI limit will be multiplied by .60 or 60 percent.

(2) To calculate the 40 percent AMGI, the 50 percent AMGI limit will be multiplied by .80 or 80 percent.

(3) To calculate the 60 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.2 or 120 percent.

(4) To calculate the 80 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.6 or 160 percent.

(f) If the LURA for an NSP Development restricts rents, the amount of rent the Development Owner is permitted to charge will be the High or Low HOME rent published by PDR or calculated in the same manner described in §10.1004 of this section using the HOME income limits.