

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
TDHCA Governing Board Approved Rule Action for  
10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.605,  
Elections Under IRC §42(g), and §10.617, Affirmative Marketing Requirements

**Disclaimer**

Attached are two proposed rule actions relating to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.605, Elections Under IRC §42(g), and §10.617, Affirmative Marketing Requirements, that were approved by the TDHCA Governing Board on February 6, 2024.

Under Tex. Gov't Code §2001.039, which requires that state agencies review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist, these sections are now required to be evaluated. Staff has determined that there is a continuing need for these rules to exist and that no revisions are currently warranted. The Secretary of State requires that even when no revisions are proposed, the rule be released for a public comment period. Therefore, the rule will be made available for public comment from February 23, 2024, through March 23, 2024, and returned to the Board for final approval.

This document, including its preamble, is expected to be published in the February 23, 2024, edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment and can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

In compliance with §2001.023, Texas Government Code, a summary of the rule and action follows for each section:

§10.605, Elections Under IRC §42(g), provides for how a Housing Tax Credit Development Owner can elect their minimum set-aside requirement, and also notes how the Department will apply the average income test if so elected. No changes are being made to this section.

§10.617, Affirmative Marketing Requirements, specifies that Affirmative Marketing is a requirement of the Department and that the specifics on that requirement are found elsewhere in rule. No changes are being made to this section.

**Public Comment**

**Public Comment Period:** Start: 8:00 a.m. Austin local time on February 23, 2024  
End: 5:00 p.m. Austin local time on March 23, 2024

Comments received after 5:00 p.m. Austin local time on March 23, 2024, will not be accepted.

Written comments may be submitted, in hard copy or electronic formats within the designated public comment period to:

Texas Department of Housing and Community Affairs

**Email: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us)**

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**

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

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

Main Number: 512-475-3800 Toll Free: 1-800-525-0657

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## DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS

Acción de regla aprobada por la Junta Directiva del TDHCA para la sección (§) 10.605 [“Elecciones de conformidad con la sección 42(g) del IRC”] y la sección (§) 10.617 [“Requisitos de comercialización afirmativa”] del subcapítulo F [“Supervisión de cumplimiento”] del capítulo 10 [“Reglas para viviendas multifamiliares uniformes”] del título 10 del Código Administrativo de Texas (TAC)

**Descargo de responsabilidad**

Se adjuntan dos acciones de reglas propuestas respecto a la sección (§) 10.605 [“Elecciones de conformidad con la sección 42(g) del IRC”] y la sección (§) 10.617 [“Requisitos de comercialización afirmativa”] del subcapítulo F [“Supervisión de cumplimiento”] del capítulo 10 [“Reglas para viviendas multifamiliares uniformes”] del título 10 del Código Administrativo de Texas (TAC), que fueron aprobadas por la Junta Directiva del TDHCA el día 6 de febrero de 2024.

En virtud de la sección (§) 2001.039 del Código de Gobierno de Texas, que exige que las agencias estatales revisen una regla cada cuatro años para evaluar si continúan existiendo las razones para adoptar inicialmente la regla, ahora se exige que se evalúen estas secciones. El personal ha determinado que existe una necesidad continua de la existencia de estas reglas y que actualmente no se justifican revisiones. La Secretaría de Estado exige que la regla se publique para un período de comentarios del público, incluso cuando no se propongan revisiones. Por lo tanto, la regla estará disponible para comentarios del público desde el 23 de febrero de 2024 hasta el 23 de marzo de 2024, y se remitirá a la Junta para su aprobación final.

Se espera que este documento, incluyendo su preámbulo, se publique en la edición del *Texas Register* del 23 de febrero de 2024. Esa versión publicada constituirá la versión oficial para fines de comentarios del público y se puede encontrar en el siguiente enlace: <https://www.sos.texas.gov/texreg/index.shtml>.

De conformidad con la sección (§) 2001.023 del Código de Gobierno de Texas, a continuación, se presenta un resumen de la regla y la acción para cada sección:

La sección (§) 10.605 [“Elecciones de conformidad con la sección 42(g) del IRC”] establece cómo un propietario de una urbanización bajo el Programa de Crédito Tributario de Vivienda puede escoger su requisito de reserva mínima, y también señala cómo el Departamento aplicará la prueba de ingresos promedio si así lo elige. No se están efectuando cambios en esta sección.

La sección (§) 10.617 [“Requisitos de comercialización afirmativa”] especifica que la comercialización afirmativa es un requisito del Departamento y que los detalles sobre ese requisito se encuentran en otra parte de la regla. No se están efectuando cambios en esta sección.

**Comentarios del público****Periodo de comentarios del público:**

Inicio: 8:00 a. m., hora local de Austin, del 23 de febrero de 2024

Finalización: 5:00 p. m., hora local de Austin, del 23 de marzo de 2024

No se aceptarán los comentarios que se reciban después de las 5:00 p.m., hora local de Austin, del 23 de marzo de 2024.

Los comentarios por escrito pueden presentarse en formato impreso, por fax o por correo electrónico dentro del período designado de comentarios del público así:

Departamento de Vivienda y Asuntos Comunitarios de Texas

**Correo electrónico: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us)**

Se anima a quienes formulen comentarios públicos a que hagan referencia al borrador de la regla, política o plan específico relacionado con su comentario, así como una referencia o cita específica asociada a cada comentario.

Tenga en cuenta que todos los comentarios enviados al TDHCA se considerarán información pública.

**DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS**

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**Attachment 1: Notice of Proposed Rule Review for 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.605, Elections Under IRC §42(g)**

The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.605, Elections Under IRC §42(g). The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to have a rule in effect that provides for how a Housing Tax Credit Development Owner can elect their minimum set-aside requirement, and also notes how the Department will apply the average income test if so elected. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for reoption will be noted in the Texas Register's Review of Agency Rules section without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from February 23, 2024, through March 23, 2024. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, at [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 23, 2024.

**Attachment 2: Notice of Proposed Rule Review for 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.617, Affirmative Marketing Requirements**

The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.617, Affirmative Marketing Requirements. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to specify that Affirmative Marketing is a requirement of the Department and that the specifics on that requirement are found elsewhere in rule. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for readoption will be noted in the Texas Register's Review of Agency Rules section without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from February 23, 2024, through March 23, 2024. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, at [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 23, 2024.

**Attachment 3: Text of Rules as Currently in Effect for 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.605, Elections Under IRC §42(g), and §10.617, Affirmative Marketing Requirements**

**§10.605, Elections Under IRC §42(g)**

(a) Under the Code, HTC Development Owners elect a minimum set-aside requirement of 20/50 (20% of the Units restricted at the 50% income and rent limits), 40/60 (40% of the Units restricted at the 60% income and rent limits), or the average income test.

(b) HTC projects must meet the required election under IRC §42(g) no later than the end of the first year of the Credit Period.

(c) An Owner that elects the average income test under IRC §42(g) must disperse 20%, 30%, 40%, 50%, 60%, 70%, and 80% Unit designations across all Unit Types to the greatest extent feasible, and in a manner that does not violate fair housing laws.

(d) Until and unless the Internal Revenue Service or the Treasury Department issues conflicting or additional guidance, the Department will examine the actual gross rent and income of all households to determine if a Project that elected the average income test are at or below the federal minimum of 60% AMI.

**§10.617, Affirmative Marketing Requirements**

Affirmative Marketing Requirements are a requirement of the Department on monitored Developments as provided for in more specificity at §10.801 of this chapter (relating to Affirmative Marketing Requirements).