

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
**TDHCA Governing Board Approved Draft of proposed new 10 Texas Administrative Code, Chapter 10,
Subchapter F, §10.614 Utility Allowances**

Disclaimer

Attached is a draft of proposed amendments to 10 TAC Chapter 10, Subchapter F, §10.614 Utility Allowances that was approved by the TDHCA Governing Board on July 9, 2026. This document, including its preamble, is scheduled to be published in the July 24, 2026, 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. Please visit the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

In compliance with Texas Government Code, §2001.023(c), a summary of the proposed rule follows:

10 TAC §10.614 provides the different methodologies for the Department's multifamily properties to calculate a utility allowance, outlines the requirements for each method and establishes deadlines for implementation of each method. The Texas Regulatory Efficiency Office (TREO) coordinates with state agencies to review agency rules and recommends potential amendments to, or repeals of, those rules. In April 2026, TREO released a draft Regulatory Efficiency Review (RER) report of possible regulatory changes that the Texas Department of Housing and Community Affairs (the Department) could make to improve efficiency in some of its rules. The recommendations in the report were not mandates or directives, but rather ideas and opportunities for improvement. TREO requested that the Department share these ideas with stakeholders for a 14-day period to garner feedback, which occurred from April 30, 2026, to May 14, 2026.

The report included a recommendation, initiated by the Department that Chapter 10, Subchapter F, §10.614 be revised to improve efficiency and remove unnecessary language, weblinks and examples. The Department received comments from two commenters; however, no updates to the proposed rule were made. The Department staff is recommending that the rule be revised to address recommendation of the Report.

Also in compliance with Texas Government Code, §2001.023(c), this cover sheet and summary are provided in both English and Spanish.

Public Comment

**Public Comment Period: Starts: 8:00 a.m. Austin local time on July 24, 2026
Ends: 5:00 p.m. Austin local time on August 24, 2026**

Comments received after 5:00 p.m. Austin local time on August 24, 2026, will not be accepted.

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

Texas Department of Housing and Community Affairs
Attn: Wendy Quackenbush
P.O. Box 13941
Austin, Texas 78711-3941
Email: wendy.quackenbush@tdhca.texas.gov

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 citation 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
Borrador aprobado por la Junta Directiva del TDHCA de una nueva propuesta: sección [§] 10.614 [“Asignaciones para servicios públicos”] del subcapítulo F [“Supervisión de cumplimiento”] del capítulo 10 del título 10 del Código Administrativo de Texas (TAC)

Descargo de responsabilidad

Se adjunta un borrador de las modificaciones propuestas a la sección [§] 10.614 [“Asignaciones para servicios públicos”] del subcapítulo F [“Supervisión de cumplimiento”] del capítulo 10 del título 10 del Código Administrativo de Texas (TAC), que recibió aprobación por parte de la Junta Directiva del Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA) el 9 de julio de 2026. Se espera que este documento, incluyendo su preámbulo, se publique en la edición del Texas Register del 24 de julio de 2026. Esa versión publicada constituirá la versión oficial para fines de comentarios del público. La versión aquí mencionada es solo informativa y no debe considerarse como fundamento para comentarios del público. Sírvase visitar el siguiente enlace: <https://www.sos.texas.gov/texreg/index.shtml>.

De conformidad con la sección [§] 2001.023(c) del Código de Gobierno de Texas, se incluye a continuación un resumen de la regla propuesta:

La sección [§] 10.614 del título 10 del Código Administrativo de Texas (TAC) establece las diferentes metodologías para que las propiedades multifamiliares del Departamento calculen una asignación para servicios públicos, describe los requisitos de cada método y fija plazos para la implementación de cada método. La Oficina de Eficiencia Reglamentaria de Texas (TREO) se coordina con las agencias estatales con el fin de revisar las reglas de las agencias y recomienda posibles modificaciones o derogaciones de dichas reglas. En abril de 2026, la TREO publicó un borrador del informe de revisión de eficiencia reglamentaria (RER) respecto a los posibles cambios reglamentarios que el Departamento de Vivienda y Asuntos Comunitarios de Texas (el Departamento) podría efectuar para mejorar la eficiencia de algunas de sus reglas. Las recomendaciones del informe no eran mandatos ni directivas, sino más bien ideas y oportunidades de mejora. La TREO solicitó al Departamento que compartiera estas ideas con las partes interesadas durante un período de 14 días para recabar comentarios, lo cual tuvo lugar del 30 de abril de 2026 al 14 de mayo de 2026.

El informe incluía una recomendación, por iniciativa del Departamento, de que se reformara la sección [§] 10.614 del subcapítulo F del capítulo 10 con el fin de mejorar la eficiencia y eliminar el texto, los enlaces web y los ejemplos innecesarios. El Departamento recibió comentarios de opinadores; sin embargo, no se realizaron actualizaciones a la regla propuesta. Por lo tanto, el personal del Departamento sugiere que la regla también se reforme para tener en cuenta las recomendaciones del informe.

Asimismo, de conformidad con la sección [§] 2001.023(c) del Código de Gobierno de Texas, esta portada y resumen se ofrecen tanto en inglés como en español.

Comentarios del público

Periodo de comentarios del público: Inicio: 8:00 a. m., hora local de Austin, del 24 de julio de 2026

Finalización: 5:00 p. m., hora local de Austin, del 24 de agosto de 2026

No se aceptarán los comentarios que se reciban después de las 5:00 p. m., hora local de Austin, del 24 de agosto de 2026.

Los comentarios por escrito pueden presentarse en formatos impreso o electrónico a la siguiente dirección:

Departamento de Vivienda y Asuntos Comunitarios de Texas
A la atención de: Wendy Quackenbush
P.O. Box 13941
Austin, Texas 78711-3941
Correo electrónico: wendy.quackenbush@tdhca.texas.gov

Los comentarios por escrito pueden presentarse en formatos impreso o de correo electrónico dentro del período designado de comentarios del público. 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

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

Dirección de correspondencia: P.O. Box 13941, Austin, TX 78711-3941

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Presentation, discussion, and possible action on an order proposing amendments to 10 TAC Chapter 10, Subchapter F, §10.614 Utility Allowances and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code, §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, 10 TAC §10.614 Utility Allowances outlines requirements and methodologies for which multifamily rental properties must comply to maintain compliance with both federal and state utility allowance requirements;

WHEREAS, Utility Allowances are the basis in which maximum allowable rent limits are calculated for low-income units;

WHEREAS, the Texas Regulatory Efficiency Office (TREO) coordinates with state agencies to review agency rules and recommend potential rule actions to improve efficiency, and TREO provided TDHCA with a Regulatory Efficiency Review Report that made suggested opportunities for improvement; and, as requested by TREO, such report was made available for stakeholder feedback in May 2026;

WHEREAS, it was suggested in the Report, at the initiation of the Department, that this rule could be amended to simplify the regulation and improve efficiency of the rule, and therefore the rule is also being revised in response to that Report;

WHEREAS, such proposed amendments in this item will be published in the *Texas Register* for public comment from July 24, 2026 to August 24, 2026, and the rule will be returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the proposed amendments of 10 TAC Chapter 10, Subchapter F §10.614, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

BACKGROUND

10 TAC §10.614 Utility Allowances makes available the different methodologies offered to the Department's multifamily properties to calculate a utility allowance, describes the requirements of each method and established deadlines for implementation for each method. Utility allowances are integral part of compliance, as they are used for determining the maximum allowable rent limit(s) a property may charge for an affordable unit.

The Texas Regulatory Efficiency Office (TREO) coordinates with state agencies to review agency rules and recommends potential amendments to, or repeals of, those rules. In April 2026, TREO released a draft Regulatory Efficiency Review (RER) report of possible regulatory changes that the Texas Department of Housing and Community Affairs (the Department) could make to improve efficiency in some of its rules. The recommendations in the report were not mandates or directives, but rather ideas and opportunities for improvement. TREO requested that the Department share these ideas with stakeholders for a 14-day period to garner feedback, which occurred from April 30, 2026 to May 14, 2026.

The report included a recommendation relating to this rule section to better streamline the rule and to remove unnecessary requirements and examples. While feedback was received on this item, staff concurs with the recommendations of TREO and is releasing the rule for a formal public comment period. The Compliance Division has accepted several of those rule recommendations to provide a better, clearer and more concise rule for the Department's multifamily properties.

The proposed amendment will be published in the *Texas Register* and released for public comment from July 24, 2026 to August 24, 2026. This rule action will be returned to the Board for final adoption.

Behind the preamble a draft of 10 TAC §10.614, Utility Allowances, is shown in blackline and shows the proposed additions and deletions to the rule.

Summary of Proposed Change:

§10.614 Utility Allowances. Simplified uniform resource locator (URL) website addresses, removed all examples from the rule, and deleted redundant language while clarifying requirements in simpler terms.

Attachment 1: Preamble, including required analysis for proposed amendment to 10 TAC Chapter 10, Subchapter F §10.614 Utility Allowances.

The Texas Department of Housing and Community Affairs (the Department) proposes the amendment of 10 TAC Chapter 10, Subchapter F, §10.614 Utility Allowances. The purpose of the proposed action is to provide a clearer, more efficient and more concise rule for the Department's multifamily properties.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because there are no costs associated with the amendment.

The Department has analyzed this 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.

Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the amendment would be in effect:

1. The amendment to the rule will not create or eliminate a government program but merely removes redundant and unnecessary verbiage from the rule;
2. The amendment to the rule will not require a change in the number of employees of the Department;
3. The amendment to the rule will not require additional future legislative appropriations;
4. The amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The amendment to the rule will not create a new regulation, but eliminates unnecessary verbiage and examples to provide a clearer and more concise rule;
6. The amendment to the rule will not repeal an existing regulation;
7. The amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The amendment to the rule will neither positively nor negatively 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 action and determined that it 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 action does not contemplate or 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 action as to its possible effects on local economies and has determined that for the first five years the rule will be in effect there will 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 rule amendment is in effect, the public benefit anticipated as a result of the repealed section would be an updated rule that is more efficient and concise. There will be no 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 amended 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 AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period will be held July 24, 2026, to August 24, 2026, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush at wendy.quackenbush@tdhca.texas.gov or by mail at P.O. Box 13941, Austin, Texas 78711-3941. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, August 24, 2026.

STATUTORY AUTHORITY. The rule is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed action affects no other code, article, or statute.

10.614 Utility Allowances

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a Utility Allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a Utility Allowance if it is not calculated in accordance with this section. An Owner is required to comply with the provisions of this section as well as any existing federal or state program guidance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms used in this section herein have the meanings assigned in Chapters 1, 2, 10, 11, 12, and 13 of this title.

(1) Building Type. The HUD Office of Public and Indian Housing (PIH) characterizes building and unit configurations for HUD programs. The Department will defer to the guidance provided by HUD ~~found at:~~ http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11608.pdf (or successor Uniform Resource Locator (URL)) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition: <http://www.powertochoose.org/> ~~(or successor URL)~~. In areas of the state where electric service is deregulated, the Department will verify the availability of residential service through Power to Choose. If the Utility Provider is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved. It is the Owner's responsibility to ensure that a Development in a deregulated area, but within the boundaries of a regulated municipality, is using the appropriate provider.

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). Any cost incurred for the actual unit of measure for the utility (e.g., base cost per kilowatt hour for electricity, TDU delivery charges, rate per gallon of water, etc.);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (e.g., Customer Charge);

(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accounts and can be found <http://comptroller.texas.gov/> ~~(or successor URL)~~ on the website of the ~~Texas Comptroller of Public Accounts~~. Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain documentation directly from the Utility Provider.

(4) Multifamily Direct Loan (MFDL). Funds provided through the HOME, NSP, NHTF, TCAP RF, HOME-ARP, ERA, or other program available through the Department, local political subdivision, or administrating agency for multifamily development that require a Utility Allowance. MFDLs may also include deferred forgivable loans or other similar direct funding, regardless if it is required to be repaid. Housing Tax Credits, Tax Exempt Bonds, CDBG, and Project Based Vouchers are not MFDLs.

(5) Renewable Source. Energy produced from energy property described in IRC §48 or IRC §45(d)(1) through (4), (6), (9), or (11). The manner in which a resident is billed is limited to the rate at which the local Utility Provider would have charged the residents for the utility if that entity had provided it to them, and as may be further limited by the Texas Utilities Code or by regulation.

(6) Submetered Utility. A utility purchased from or through a local Utility Provider by the building Owner where the resident is billed directly by Owner of the building or to a third party billing company and the utility is:

(A) Based on the residents' actual consumption of that utility and not an allocation method or Ratio Utility Billing System (RUBS);

(B) The rate at which the utility is billed does not exceed the rate incurred by the building Owner for that utility; and

(C) Tenants receiving a tenant-based Housing Choice Voucher or residing in a Housing Tax Credit Development may not be charged a service fee for submetered utilities. For MFDL Developments where tenants are being charged a service fee for submetered utilities, the fee must either be included in the Utility Allowance or be included in the gross rent calculation as a mandatory fee.

(7) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet. A utility allowance is considered implemented once the Unit Status Report is updated and rents are restricted.

(A) For HTC, TCAP, Exchange buildings, Bonds, and THTF include:

(i) Utilities paid by the household directly to the Utility Provider;

(ii) Submetered Utilities; and

(iii) Renewable Source Utilities.

(B) For a Development with an MFDL, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.

(8) Utility Provider. The company that provides residential utility service (e.g., electric, gas, water, wastewater, and/or trash) to the buildings. If the Utility Provider offers more than one rate plan, the plan selected must be available to all households in the building.

(c) Methods. The following options are available to establish a Utility Allowance for all programs except most Developments funded with MFDL funds, which are addressed in subsection (d) of this section. A Development with HOME-ARP Units or Units subject to the 2025 HOME Final Rule, and that does not have Units subject to the 2013 HOME Rule, may use methods in this subsection or subsection (d) of this section, but must select one method per Development if the HOME-ARP Units or Units subject to the 2025 HOME Final Rule are floating or one method per building if these Units are fixed. ~~cannot combine two methods in one building.~~

(1) Rural Housing Services (RHS) buildings or buildings with RHS assisted residents. The applicable Utility Allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted residents.

(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any resident in the building receives RHS rental assistance payments, and the rents and the Utility Allowances of the building are regulated by HUD (HUD-regulated building), the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service (IRS), the Department considers Developments awarded an MFDL (e.g., HOME) to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority (PHA). The Utility Allowance established by the applicable PHA for the Housing Choice Voucher Program. The Department will utilize the Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). ~~Example 614(1): The applicable PHA publishes a separate Utility Allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consists of 20 buildings, 10 of which are Apartments (5+ units) and the other 10 buildings are Duplexes.~~ The Owner must use the correct schedule for each Building Type.

(ii) In the event the PHA publishes a Utility Allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the Utility Allowance if the resident is responsible for that utility.

(iv) If the individual components of a Utility Allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. ~~Example 614(2): Electric cooking is \$8.63, Electric Heating is \$5.27, Other Electric is \$24.39, Water and Sewer is \$15. The Utility Allowance in this example is \$54.00.~~ If the PHA schedule reflects a rounded amount, then the PHA method of rounding should be used.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher

holders, the Utility Allowance remains the applicable PHA Utility Allowance established by the PHA from which the household's voucher is received.

(vi) If the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a Utility Allowance schedule for the Housing Choice Voucher Program, Owners must select an alternative methodology, unless the building(s) is located in the published Housing Choice Voucher service area of:

(I) A Council of Government created under Texas Local Government Code, Chapter 303, that operates a Housing Choice Voucher Program;

(II) The Department's Housing Choice Voucher Program; or

(III) Another PHA which publishes a separate utility allowance schedule specific to the Development's location.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found [on HUD's website at http://www.huduser.gov/portal/resources/utilallowance.html](http://www.huduser.gov/portal/resources/utilallowance.html) (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates.

(i) The allowance must be calculated using the MS Excel version available [on HUD's website at http://www.huduser.gov/portal/resources/utilmodel.html](http://www.huduser.gov/portal/resources/utilmodel.html) (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the zip code for the Development is not listed in "Location" tab of the workbook, the Department will default to the PHA code from the PHA that is closest in distance to the Development using online mapping tools (e.g. Google Maps). If neither the zip code nor the PHA code is listed, a zip code that borders the Development's zip code will be used. The Department will obtain the PHA codes from [HUD's website. https://www.hud.gov/sites/dfiles/PIH/documents/PHA_Contact_Report_TX.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/PHA_Contact_Report_TX.pdf) (or successor Uniform Resource Locator (URL)).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review. Energy Star certifications will require the certificates for each Unit at the time of the initial Utility Allowance review and a letter from a properly licensed engineer annually thereafter. The engineer letter will be accepted for a period of five (5) years and must be updated thereafter.

(I) In the event the allowance is being calculated for an application of Department funding (e.g., 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes.

(II) At lease up, the owner may use the utility allowance taking into consideration the green discount if they obtain written documentation from a qualified professional (e.g., a qualified energy efficiency consultant) indicating that the Units and buildings will meet the qualifications for the Green Discount within six months of the placed in service date or for MFDL within six months of the construction completion date.

(iv) Do not take into consideration any costs (e.g., penalty) or credits that a consumer would incur because of their actual usage. ~~Example 614(3): The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of \$40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less than 2000 kWh. Example 614(4): A monthly minimum usage fee of \$9.95 is applied when the usage is less than 1000 kWh in the billing cycle.~~ When calculating the allowance, disregard these types of costs or credits.

(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer. The license of the engineer must be submitted along with the model. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, characteristics of building location, and available historical data. Component Charges used must be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates; and

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least five Continuously Occupied Units of each Unit Type or 20% of each Unit Type, whichever is greater. If there are less than five Units of any Unit Type, data for 100% of the Unit Type must be provided; and

(ii) Upload the information request and backup documentation as required on the Questionnaire. in subclauses (I) – (IV) of this clause to the Development's CMTS account. The Guidance and Questionnaire can be found on the Department's website. The submission must comply with no later than the beginning of the 90 day period after which the Owner intends to implement the allowance, reflecting data no older than 60 days prior to the 90 day implementation period described in described in subsection (f)(3) of this section related to Effective Dates.

~~(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (e.g., actual kilowatt usage for electricity) for each month of the 12 month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;~~

~~(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;~~

~~(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and~~

~~(IV) Documentation of the current Utility Allowance used by the Development.~~

~~(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the Utility Allowance for each bedroom size using the guidelines described in subclauses (I) – (V) of this clause;~~

~~(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;~~

~~(II) If more than 12 months of data is provided for any Unit, only the data for the most current 12 will be averaged;~~

~~(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last 12 months by the current rate) for~~

~~all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;~~

~~(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and~~

~~(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.~~

~~(iv) T(iii) t~~ The Department will complete its evaluation and calculation within 45 days of receipt of all the information requested in clause (ii) of this subparagraph;

(d) In accordance with 24 CFR §§92.252 and 93.302, for an MFDL in which the Department is the funding source, the Utility Allowance will be established in the following manner:

(1) For Developments with fixed MFDL Units, only one utility allowance may be used in buildings with MFDL units. For Developments with floating MFDL Units, only one utility allowance may be used for the entire Development.

(2) For Developments that, as a result of funding, must calculate the Utility Allowance under HUD Multifamily Notice H-2015-4, as revised from time to time, the applicable Utility Allowance for all rent restricted Units in the building is the applicable Utility Allowance calculated under that Notice. No other utility method described in this section can be used.

(3) Other Buildings. The Utility Allowance may be initiated by the Owner using the methodologies described in subsection (c)(3)(B), (C), (D), or (E) of this section related to Methods. Buildings for which the only source of MFDL funding is HOME-ARP and which contain no Units subject to the 2013 HOME Rule may calculate the Utility Allowance using the methodology described in subsection (c)(3)(A) of this section. A Development that is subject to the 2025 HOME Final Rule may also use the methodology described in subsection (c)(3)(A) of this section, if the Development does not also contain Units subject to the 2013 HOME rule. The methodology must be annually reviewed and approved by the Department.

(4) If a request is not received by October 1st, the Department will calculate the Utility Allowance using the HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Monitor Review Questionnaires submitted with prior monitoring reviews; or

(C) The owner may be contacted and required to complete the Utility Allowance Questionnaire. In such case, a five day period will be provided to return the completed questionnaire.

(D) Utilities will be evaluated in the following manner:

(i) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(ii) For deregulated utilities:

(I) The Department will use the Power to Choose website and search available Utility Providers by ZIP code;

(II) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans; and

(III) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be entered into the Model.

(E) The Department will notify the Owner contact in CMTS of the new allowance and, if requested, provide the backup for how the allowance was calculated. The owner will be provided a five day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the residents will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five day period, the owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(F) The allowance must be implemented for rent due in all program Units thirty days after the Department notifies the Owner of the allowance.

(5) Buildings in which there are Units under an MFDL program are considered HUD-Regulated buildings and the applicable Utility Allowance for all rent restricted Units in the building is the Utility Allowance calculated under the MFDL program. If the Department is the awarding entity, no other utility method described in this section can be used. If the Department is not the awarding jurisdiction, Owners are required to obtain, annually, the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive. In such an event, provided that sufficient evidence of due diligence is demonstrated, the Department, in its sole discretion, may allow for the use of the methods described in subsection (c)(3)(B), (C), (D) or (E) of this section related to Methods to calculate and establish its utility allowance.

(e) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (e.g., base charges, cost per unit of measure, taxes) Owners should obtain documentation directly from the Utility Provider and/or Regulating State Agency. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is billing residents through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(f) Changes in the Utility Allowance. An Owner may not change Utility Allowance methods, start or stop charging residents for a utility without prior written approval from the Department.

~~Example 614(5): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year eight, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required.~~ Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation. Developments may not start or stop charging residents for a utility during a lease term.

(1) The Department will review all requests, with the exception of the methodology prescribed in subsection (c)(3)(E) of this section related to Methods, within 90 days of the receipt of the request.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. ~~Example 614(6): The Owner has chosen to calculate the electric portion of the Utility Allowance using the written local estimate. The annual letter is dated July 5, 2022, and the notice to the residents was posted in the leasing office on July 5, 2022. However, the Owner failed to submit the request to the Department for review until September 15, 2022. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the owner until approved by the Department.~~

(3) Effective dates. If the Owner uses the methodology as described in subsection (c)(3)(A) of this section related to Methods, no posting is required, and any changes to the allowance can be implemented immediately, but must be implemented for rent due at least 90 days after the change. For methodologies as described in subsection (c)(3)(B), (C), (D) and (E) of this section related to Methods, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the 90 day period in which the Owner intends to implement the Utility Allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent

issue.

[202606009-1.pdf](#)

(g) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due 90 days after the PHA published effective date.

(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the Utility Allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved Utility Allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request. With the exception of MFDL developments, if an Owner fails to submit for annual review during the calendar year, the Development's Utility Allowance will default to the applicable PHA allowance. If the Development is located in an area that does not have a PHA, the Development fails to have a properly calculated Utility Allowance. The Utility Allowance for MFDL Developments that fail to submit for annual review will be calculated pursuant to subsection (d) of this section.

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. With the exception of MFDL developments, if an Owner fails to submit for annual review during the calendar year, the Development's Utility Allowance will default to the applicable PHA allowance. If the Development is located in an area that does not have a PHA, the Development fails to have a properly calculated Utility Allowance. The Utility Allowance for MFDL Developments that fail to submit for annual review will be calculated using the HUD Utility Model Schedule.

(h) For Owners participating in the Department's Section 811 Project Rental Assistance (PRA) Program, the Department's 811 division staff will approve the Utility Allowance for all 811 Units. On an annual basis, the Owner is responsible for submitting a Utility Allowance to the Department's 811 division for review. Once approved, the 811 division will provide the Owner with a property-specific rent schedule containing the approved Utility Allowance. The allowance listed on the rent schedule only applies to 811 PRA Units, not the entire building, and is the only allowance approved for use on 811 PRA Units. Failure to obtain an updated rent schedule for changes in utility allowances and gross rents will result in noncompliance and will require the Department to monitor tenant rents using the current approved rent schedule.

(i) Combining Methods. In general, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (e.g., electric, gas). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance. RHS and certain HUD-Regulated buildings (e.g., buildings with MFDL funds) are not allowed to combine methodologies.

(j) The Owner shall maintain and make available for inspection by the resident all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the resident at the convenience of both the Owner and resident.

(k) Utility Allowances for Applications.

(1) If the application includes RHS assisted buildings or tenants, the utility allowance is prescribed by the RHS program. No other method is allowed.

(2) If the application includes HUD-Regulated buildings for HUD programs other than an MFDL program the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method is allowed.

(3) If the application includes MFDL funds from the Department, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(B), (C), (D) or (E) of this section related to Methods. A Development with HOME-ARP Units that is subject to the 2025 HOME Final Rule may use subsection (c)(3)(A) of this section, if the Development does not also contain one or more Units subject to the 2013 HOME Final Rule. Applicants must submit their utility allowance to the Compliance Division prior to full application submission. In the event that the application has an MFDL from the Department, and receives federal funds from a unit of local government, the Department will require the use of the allowance approved by the Department.

(4) If the application includes federal funds from a unit of local government but no MFDL from the Department, Applicants are required to request in writing the Utility Allowance from the awarding jurisdiction. If the awarding jurisdiction does not respond or requests the Department calculate the allowance, the Department will establish the initial Utility Allowance in accordance with subsection (d)(3) of this section.

(5) For all other applications, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(A), (B), (C), (D), or (E) of this section related to Methods. If using the method described in subsection (c)(3)(B), (C), (D), or (E) of this section, applicants must submit their utility allowance to the Compliance Division prior to full application submission.

(A) Upon request, the Compliance Division will calculate or review an allowance for application. The request must be submitted to the Compliance Division no later than 21 days, but no earlier than 90 days, from when the application is due.

~~(B) Example 614(7): An application for a 9% HTC is due March 1, 2022. The applicant would like Department approval to use an alternative method by February 15, 2022. The request must be submitted to the Compliance Division no later than January 25, 2022, three weeks before February 15, 2022.~~

~~(C) Example 614(8): An Applicant intends to submit an application for a 4% HTC with Tax Exempt Bonds on August 11, 2022, and would like to use an alternative method. Because approval is needed prior to application submission, the request can be submitted no earlier than May 13, 2022, (90 days prior to August 11, 2022) and no later than July 21, 2022, (21 days prior to August 11, 2022).~~

~~(B)(D)~~ Any requests for new resources (either additional funds or tax credits) on a Development with an existing Department LURA must use the method that is in effect on the existing Development. If the Owner wishes to change or if for an MFDL application is required to change the methods for the purposes of the application, a request for the existing Development must first be submitted to the Compliance Division for approval.

(6) All Utility Allowance requests related to applications of funding must:

~~(A) Be submitted directly to UA-Application@tdhca.texas.gov. Requests not submitted to this email address will not be recognized.~~

~~(A)(B)~~ Include ~~include~~ the "Utility Allowance Questionnaire for Applications" along with all required back up based on the method. If back-up is not submitted the Utility Allowance will be calculated using the HUD Utility Schedule Model as described in subsection (d)(3) of this section.

(l) If Owners want to change to a utility allowance other than what was used for underwriting the Owner must submit Utility Allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. The Owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year of the Credit Period (if applicable), whichever is earlier. Once a request to change the utility allowance is approved or implemented, the utility allowance used at underwriting is no longer valid.

(m) Department review and approval of Renewable Sources (e.g. solar):

(1) Methods outlined in subsection (c)(3)(A), (B), (C), (D) and (E) of this section are allowable if the Utility Provider or PHA publishes a rate plan or schedule specific to Renewable Sources. The method outlined in subsection (c)(3)(E) of this section is allowable only after occupancy is established as outlined in subsection (c)(3)(E) of this section;

(2) Only buildings benefitting from Renewable Sources can use a Renewable Source utility allowance;

(3) Tenants (not Owners) must benefit from the Renewable Source in a manner that is not a discount or credit. To evidence the benefit, 20% of current tenant bills must be submitted with the request; and

(4) An Owner must submit both the Renewable Source allowance and the non-Renewable Source allowance for approval regardless of methodology or current occupancy. If the Renewable Source is damaged or inoperable for more than 30 days, the non-Renewable Source allowance must be implemented. At the time of the first review or the first annual utility allowance review, whichever is first, the Owner must be able to demonstrate with tenant bills that the tenants are benefitting from the Renewable Source; otherwise, the non-Renewable allowance must be used.

(n) The Department reserves the right to outsource to a third party the review and approval of all or any Utility Allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(o) All requests described in this subsection must be complete and uploaded [directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field and "Utility Allowance" as the TDHCA Contact, as required on the applicable Questionnaire for both established Developments and Applications.](#) The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.