



Affordable Rental Program

Affordability Compliance Manual

Texas General Land Office
Community Development & Revitalization

Revision History and Updates:

<u>Date</u>	<u>Person</u>	<u>Description</u>
<u>05/25/21</u>	<u>Julie Parlato</u>	<u>Version 1 Draft, 2.3, C, ii</u>
<u>6/15/21</u>	<u>Julie Parlato</u>	<u>Version 1 Draft, 2.3 B ii</u>
<u>11/22/21</u>	<u>Julie Parlato</u>	<u>Version 1 Draft, 1.3</u>
<u>11/22/21</u>	<u>Julie Parlato</u>	<u>Version 1 Draft, 2.1</u>
<u>11/22/21</u>	<u>Julie Parlato</u>	<u>Version 1 Draft, 2.2</u>
<u>11/22/21</u>	<u>Julie Parlato</u>	<u>Version 1 Draft, 2.2 A-C</u>
<u>11/22/21</u>	<u>Julie Parlato</u>	<u>Version 1 Draft, 2.2 F-H</u>
<u>11/22/21</u>	<u>Julie Parlato</u>	<u>Version 1 Draft, 2.2 J</u>
<u>11/22/21</u>	<u>Julie Parlato</u>	<u>Version 1 Draft, 2.3 B-C</u>
<u>11/22/21</u>	<u>Julie Parlato</u>	<u>Version 1 Draft, 3</u>
<u>7/20/22</u>	<u>Julie Parlato</u>	<u>Version 2 Draft 2.2 A.v.</u>
<u>7/20/22</u>	<u>Julie Parlato</u>	<u>Version 2 Draft 2.2 E</u>
<u>7/20/22</u>	<u>Julie Parlato</u>	<u>Version 2 Draft 2.3 B ii, vi</u>
<u>7/20/22</u>	<u>Julie Parlato</u>	<u>Version 2 Draft Sec 3</u>
<u>9/20/22</u>	<u>Julie Parlato</u>	<u>Version 3 Draft 2.2 C</u>
<u>1/4/23</u>	<u>Julie Parlato</u>	<u>Version 4 Draft 2.3 B i, vi, vii.</u>
<u>7/24/23</u>	<u>Julie Parlato</u>	<u>Version 5 Draft 2, 3</u>
<u>9/26/23</u>	<u>Julie Parlato</u>	<u>Version 6 Draft 2.2 A, C, J</u>
<u>9/26/23</u>	<u>Julie Parlato</u>	<u>Version 6 Draft 2.3 B, C</u>
<u>9/26/23</u>	<u>Julie Parlato</u>	<u>Version 6 Draft 3</u>

Table of Contents:

1. General Requirements
2. Reviews
3. Corrective Action

Section 1- General Requirements:

1.1 Written Agreements

The written agreement is the legally binding document that the Texas General Land Office (“GLO”) executes with the owner or recipient of CDBG-DR funds. HUD requires the agreement to include certain minimum provisions, to ensure compliance with 83 FR 5844. For CDBG-DR assisted rental properties, the written agreement is enforced by a deed restriction, a covenant running with the land, or other mechanism approved by GLO.

1.2 Deed Restrictions and Covenants

A deed restriction or covenant is a legally binding document that is attached to a CDBG-DR funded rental property. The deed restriction or covenant “runs with the land” for the entire affordability period. It ensures that the CDBG-DR affordability requirements stay in place regardless of whether the funds are repaid, or property ownership transfers. Current and future owners are legally bound by the terms outlined in the Land Use Restriction Agreement (“LURA”). The deed restriction or covenant must be recorded and is enforceable by the GLO.

1.3 Affordability Period

The affordability period is the length of time during which the CDBG-DR requirements apply to the CDBG-DR funded property. The affordability period for Hurricane Harvey Projects can be 10, 15, or 20 years depending on the type of construction.

The affordability period can be thought of as the “compliance period.” During this time, the rental property owner must comply with HOME rents, HUD income requirements, tenant lease protections, affirmative marketing, and property standards, among other requirements in the LURA. After the CDBG-DR required affordability period ends, the requirements no longer apply.

When a CDBG-DR funded rental property is also assisted by other public funding sources, the owner must comply with the more stringent of the requirements as outlined in the respective program requirements or deed restrictions.

1.4 Plan Improvements

The requirements stated within this plan may change over the course of the affordability period due to GLO decision or applicable HUD and TDHCA rules. The plan may be corrected at any time to best represent the applicable rules as they are decreed.

1.5 Notification

Each property will receive a notice of impending review at least 30 days ahead of the review. An outline of the information that will be requested will be included in the notice. When the review concludes, a notice of Review Completion will be issued. If deficiencies are present, that information will be included in the notice of Review Completion. Once the deficiencies are corrected, a notice will be issued stating their resolution.

Section 2- Reviews:

2.1 Initial Review

Once the property is in possession of a Certificate of Occupancy for all units or a G704 Statement of Substantial Completion, an initial review should be completed within 18 months. An initial review must contain a review of each item in the annual review and 3-5 year review sections of this plan. A checklist for each will be completed at the time of the initial review. During the affordability period, household income must be verified annually for all tenants of CDBG units.

If the property has a Wetland LURA, proof of the filed document must be presented at the Initial Review.

2.2 Annual Review

Each property must submit the following for review annually. If a previous review required corrective action, proof of completion will need to be included submitted to the GLO office within 30 days of the Review Conclusion Letter being issued to the project.

- A. Compliance Unit Report (CUR)- (*Comparable document is acceptable so long as no information is missing*) Must include all columns filled out for all CDBG units and the information must be less than 30-days old.
 - a. High-HOME rents posted annually [click here](#)
 - b. For 30% Rents, the Total Tenant Payment must equal or be less than 30% Rent Limit found in TDHCA's [Project Income and Rent Tool](#), of the current year, by bedroom size. Financing option to use is "HOME/TCAP RF"
 - c. Tenant Rent, Utility Allowance, and Housing Assistance Payment cannot exceed the above rent limits unless a Housing Choice Voucher Payment Standard is utilized (voucher required)
- B. Rent Schedule
 - i. A schedule of rents to ensure compliance with CDBG-DR and HUD requirements. The rent schedule should include:
 - a. Type of Unit Income Level Served
 - b. Number of Units
 - c. Number of Bedrooms
 - d. Gross Rents
 - e. Rent Collected/ Unit
 - f. Total Monthly Project Rent Potential
- C. Housing Unit Inspections- Review all annual inspections for units with move-ins and recertifications effective during the calendar month chosen by the auditor. If deficiencies are found, maintenance work orders will be required to prove resolution. (Not applicable in Initial Review for new construction)
- D. Self-Certification- the project must submit a Certificate of Continuing Compliance with all occupancy standards, terms, and provisions of the LURA and referencing their compliance with the Compliance Unit Report, Affirmatively Furthering Fair Housing and marketing for fair housing, among other topics. Form is provided by the GLO.

- E. Utility Allowance schedule, source (vendor, PHA, etc.), and effective date.
- F. Review Summary from most recent ACR/MOR from TDHCA/ HUD (*if applicable*). If the MOR states that the project is non-compliant, the project must submit proof that corrective action was submitted and approved at the next annual review.
- G. Proof of Current Flood Insurance
 - i. In accordance with GLO or HUD guidelines, applicable properties will maintain flood insurance in an amount and duration prescribed by The Federal Emergency Management Agency's Flood Insurance Program and maintain said flood insurance for the Term of the Agreement if in flood plain/area.
- H. Annual property budget
 - i. A property budget including cost of all vendor contracts with the property (ex. *Landscaping, trash, make-ready, etc.*)
- I. Tenant Selection Plan & Amendments- refer to HUD 4350.3 Ch 4 for guidance when creating the TSP. Each should also be
 - i. Written and displayed at the project leasing in a common area
 - ii. Consistent with the purpose of providing housing for families making 80 percent or less of AMI;
 - iii. Reasonably related to program eligibility and tenants' ability to perform under the lease;
 - iv. Chronological with applications, so that tenants taken from a written waiting list are assisted in order;
 - v. Designed to give prompt written notice of the grounds for rejection to any lessee rejected based on income.
- J. Other documents as requested;
- K. Corrective Action:
 - i. If a systemic issue of non-compliance with the affordability requirements is reflected during reviews, then the project will be required to adhere to corrective actions set forth by the GLO.
 - ii. Tenant files may be requested for review at the GLOs discretion as a result of the annual review, outside of the 3-5 year file review.

2.3 3-5 Year Review and Physical Site Visit

Also coinciding with the Initial Review and occurring every 3-5 years after until the affordability period ends, the property must submit the following for review. For the site visit section of this review, when not possible as determined by the GLO, photographs of physical asset and scans of documents can occur instead of a physical visit.

- A. Affirmative Marketing Plan – Most recent HUD approved Affirmative Fair Housing Marketing Plan with copies of marketing efforts. If no HUD approved AHFMP is available, most recent self-certified AFHMP is requested. If the rule regarding HUD approval is reinstated, the client will be responsible for following current HUD requirements.

B. Tenant file review

- i. Income and asset verifications (Documents cannot be older than 90 days and verification by management of household income cannot be more than 90 days old at move-in/recertification.)
 - a. Income calculation must include Upfront Income Verification and/or tenant provided documents for at least most recent 4 consecutive weeks or 2 consecutive paycheck stubs, whichever covers more time, for proof of income) with calculation tapes attached. Income must be recertified annually.
 - b. Asset Calculation- To determine asset income, a statement of all assets' values must be collected and dated within the 90 days of the certification. If the managing entity has an Asset Verification form template, this is acceptable if signed by a representative of the location of the asset (e.g. Wells Fargo). All statements of assets must be collected at move-in and annually
 1. If total assets are at or below \$50,000, a self-certification is acceptable at move-in and annually, the income from these assets does not need to be included in total household income. Self-certification forms can be found on the TDHCA and HUD websites.
 2. If total assets exceed \$50,000, the imputed income must be calculated for all assets without actual income. The imputed income and the actual asset income is combined and included in the household income.
 - c. Gross income combined with asset income must not exceed the income limits for the affordability designation of that household.
- ii. Annual Recertification notices are mandatory to the tenant and should be kept in the file. If the rent for the tenant increases at recertification, the tenant should be notified in writing at least 30-days ahead of the change. Annual recertification documents should be signed and dated during the recertification appointment. Pre and post-dating documents is unacceptable.
- iii. If the environmental review states presence of lead-based paint in tenant units, the tenant file must include a Lead Based Paint acknowledgement form at move-in.
- iv. The lease (or an addendum) must include verbiage that describes the specific protections afforded to the victims of Violence Against Women Act crimes.
- v. If the property has been flooded in the past 5 years or is located in a 100-year floodplain, a Flood Disclosure Notice must be signed at move-in and kept in the file. If flooding has occurred during a household's tenancy, the Flood Disclosure Notice must be signed at the following recertification.
- vi. Student status: Households composed entirely of full-time students that are income eligible and satisfy one or more of the TDHCA Student Eligibility questionnaire are considered eligible. A verification of student status should be included for all adults in the household.

- vii. Over Income Guidance:
 - i. The Next Available Unit Rule will be applied to the income range above where the tenant is now. For example, an over income 30% renter could be considered 80% of market, and 80% renter could be considered a market rate renter. Rent must be adjusted.
 - ii. If the property has market rate units, an over-income household should be considered a market rate unit when the combined income is over the published limits.
 - iii. If the property rents only to LMI tenants, the household can make up to 140% of the published income limits and pay only the High HOME rent. When the household's income exceeds 140% of the published income limits, the property can charge either the fair market rent or 30% of the household's gross income. If a property needs assistance calculating 30% of the income, please contact the compliance team.
 - viii. If an accessible unit is leased to a tenant(s) who is not in need of the accommodations, that tenant must be notified in writing at move-in that they may be required to relocate units if another tenant(s) requests an accessibly modified unit. This relocation would be paid for by management.
- C. Physical standard safeguards
- i. The GLO requires a minimum of 3 years of document retention; documents must be kept to the minimum amount of time required by any agencies that have jurisdiction over the property if that requirement is over 3 years.
 - ii. Management must perform unit inspections at move-in and annually and retain these in the tenant file.
 - a. Four consecutive quarterly inspections may be substituted for an annual inspection.
 - iii. The GLO may perform physical site visits to inspect property's exterior, grounds, and units. During GLO physical site visits, compliance monitors may visit occupied resident units with proper notice at the GLO's discretion and inspect following HUD's NSPIRE guidelines.
 - a. Deficiencies found by inspectors must be resolved in timeframe prescribed by HUD NSPIRE guidelines.
 - iv. Management offices must have the following documents posted (new information must be reposted as published)
 - a. Current Income Limits
 - b. Current Rent Schedule/Rental Rates
 - c. Hours and Emergency Phone number
 - d. Tenant Selection Plan
 - e. [Fair Housing Poster](#), must be posted in the manager's office or onsite in a common room if no manager's office is present. The poster should be replaced anytime a new one is published.

- i. If residents that do not speak English live at the property, the Fair Housing Poster in the present languages must be posted annually as well. ([language options](#))
- v. The property must comply with HUD's guidance on Personally Identifiable Information and Sensitive Personally Identifiable Information published in [OHC_PII042815](#). This includes verbal communication as well as written communication and information in the tenant files.

Section 3: Corrective Action

After each desk review, a Review Conclusion letter will be issued to the property with any necessary corrective actions. Corrections must be submitted back to the GLO within 30 days. Extensions may be granted at the GLO's discretion.

After 90 days GLO reserves the right to conduct random site visits until all outstanding items are resolved.

At the GLO's discretion, with repetitive non-compliance and unwillingness to follow through with corrective actions, the GLO may begin recapture procedures.