

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

TDHCA Governing Board Approved Draft of

10 TAC Chapter 8, Project Rental Assistance Program Rule, §8.4, Qualification Requirements for Existing Developments

Disclaimer

Attached is a draft of proposed 10 TAC Chapter 8, Project Rental Assistance Program Rule, §8.4, Qualification Requirements for Existing Developments. This draft was approved by the TDHCA Governing Board on December 7, 2023. This action entails an amendment to the rule. This document, including its preamble, is expected to be published in December 22, 2023, 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 proposed rule follows:

Tex. Gov't Code §2306.053 provides for the Department to administer federal housing, community affairs, and community development programs, including the low-income housing tax credit program. As it relates to Department programs, Chapter 8 governs the Section 811 PRA Program.

The National Standards for the Physical Inspection of Real Estate (NSPIRE) is the new Housing and Urban Development (HUD) physical inspection standard protocol designed to reduce health and safety hazards in a home. NSPIRE was recently integrated into the Department's Compliance rules and replaces the Uniform Physical Condition Standards (UPCS) previously used by the Department. References to UPCS will be retained for a period, however NSPIRE is being added to be sure that all types of inspections would be covered.

The amendment to the rule also adds what the score cut-off must be if the most recent inspection was performed with NSPIRE. While the Department does not have any data yet by which to set the score, anecdotally we are hearing that properties are scoring lower than UPCS scores. This may be because the NSPIRE protocol is very unit focused and heavily weighted on unit deficiencies. There are over 100 life threatening deficiencies compared to the significantly fewer under UPCS. Therefore, staff is recommending in the draft that the threshold score for NSPIRE for 811 be a score of 75. This will assure that only good properties are participating, but will give a little more flexibility on the score.

Public Comment

Public Comment Period: Start: 8:00 a.m. Austin local time on December 22, 2023

End: 5:00 p.m. Austin local time on January 22, 2024

Comments received after 5:00 p.m. Austin local time on January 22, 2024, will not be accepted. Written comments may be submitted electronically within the designated public comment period to:

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

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Departamento de Vivienda y Asuntos Comunitarios de Texas

Borrador aprobado por la Junta Directiva del TDHCA

de la sección (§) 8.4 [“Requisitos de calificación para urbanizaciones existentes”] del capítulo 8 [“Regla del Programa de Asistencia con el Alquiler en Proyectos de Vivienda”] del título 10 del Código Administrativo de Texas (TAC)

Descargo de responsabilidad

Se adjunta un borrador de la propuesta para la sección (§) 8.4 [“Requisitos de calificación para urbanizaciones existentes”] del capítulo 8 [“Regla del Programa de Asistencia con el Alquiler en Proyectos de Vivienda”] del título 10 del Código Administrativo de Texas (TAC). Este borrador fue aprobado por la Junta Directiva del TDHCA el día 7 de diciembre de 2023. Esta medida supone una modificación de la regla. Se espera que este documento, incluyendo su preámbulo, se publique en la edición del *Texas Register* del 22 de diciembre de 2023. Esa versión publicada constituirá la versión oficial para fines de comentarios públicos 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, se incluye a continuación un resumen de la regla propuesta:

La sección (§) 2306.053 del Código de Gobierno de Texas dispone que el Departamento (TDHCA) administre programas federales en materia de vivienda, asuntos comunitarios y desarrollo comunitario, incluyendo el Programa de Crédito Tributario para Viviendas de Bajos Ingresos. En lo que se refiere a los programas del Departamento (TDHCA), el capítulo 8 rige el Programa PRA de la Sección 811.

Las Normas Nacionales para la Inspección Física de Bienes Raíces (NSPIRE) son el nuevo protocolo estándar de inspección física del Departamento de Vivienda y Desarrollo Urbano (HUD), pensado para reducir los riesgos para la salud y la seguridad en una vivienda. Las NSPIRE se integraron de manera reciente a las reglas de cumplimiento del Departamento (TDHCA) y reemplazan a las Normas Uniformes de Condiciones Físicas (UPCS) utilizadas anteriormente por dicho Departamento. Las referencias a UPCS se conservarán durante un período de tiempo. Sin embargo, se agregarán las NSPIRE para garantizar que se cubran todos los tipos de inspecciones.

La modificación a la regla también agrega cuál debe ser el puntaje límite si la inspección más reciente se llevó a cabo con NSPIRE. Si bien el Departamento (TDHCA) aún no cuenta con datos para establecer el puntaje, escuchamos de manera anecdótica que las propiedades tienen puntajes menores que los de las UPCS. Esto puede deberse a que el protocolo de las NSPIRE está muy centrado en las unidades y tiene mucho peso en las deficiencias de dichas unidades. Existen más de 100 deficiencias amenazantes para la vida en comparación con la cantidad significativamente menor según las UPCS. Por lo tanto, el personal recomienda en el borrador que el puntaje umbral para las NSPIRE respecto a la Sección 811 sea de 75. Esto garantizará que solo participen propiedades con buenas características, aunque dará un poco más de flexibilidad en la puntuación.

Comentarios del público

Periodo de comentarios del público: Inicio: 8:00 a. m., hora local de Austin, del 22 de diciembre de 2023

Finalización: 5:00 p. m., hora local de Austin, del 22 de enero de 2024

No se aceptarán los comentarios que se reciban después de las 5:00 p. m., hora local de Austin, del 22 de enero de 2024. Los comentarios por escrito pueden enviarse de manera electrónica dentro del período designado de comentarios del público a 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

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

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Attachment A: Preamble, including required analysis, for proposed amendments to 10 TAC Chapter 8, Project Rental Assistance Program Rule, §8.4, Qualification Requirements for Existing Developments

The Texas Department of Housing and Community Affairs (the Department) proposes amending 10 TAC Chapter 8, Project Rental Assistance Program Rule, §8.4, Qualification Requirements for Existing Developments. The amendments will add reference to a new inspection protocol, NSPIRE, and specify what the minimum NSPIRE score must be to qualify for the 811 PRA Program as an existing development.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed rule action would be in effect, the proposed actions do not create or eliminate a government program, but relate to changes to an existing activity, existing properties qualifying for the 811 PRA Program.
2. The proposed amendment to the rule will not require a change in the number of employees of the Department;
3. The proposed amendment to the rule will not require additional future legislative appropriations;
4. The proposed amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed amendment to the rule will not create a new regulation, but merely revises a regulation to reference a new inspection protocol;
6. The proposed amendment to the rule will not repeal an existing regulation;
7. The proposed amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The proposed amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be the clarification of what inspection method may be used and what the cut-off score would be for the NSPIRE inspection. There will not be any economic cost to any individual required to comply with the amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this action may be submitted in writing from December 22, 2023, through January 22, 2024. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, P.O. Box 13941, Austin, Texas 78711-

3941, or by email to brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local (Central) time, January 22, 2024.

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

§8.4, Qualification Requirements for Existing Developments

Eligible Existing Developments must meet all of the requirements in §8.3 of this chapter (relating to Participation as a Proposed Development). In addition, the Existing Development must meet the following requirements:

(1) The Development received an award (tax credit, direct loan, etc.) under a Department administered program in or after 2002, or has been otherwise approved by the Department in writing;

(2) The Development has at least 5 housing units;

(3) For Developments that were placed in service on or before January 1, ~~2020~~2017, the most current vacancy report as reflected in CMTS evidences that the Development maintained at least 85% physical occupancy for a period of at least 3 consecutive months;

(4) For Developments that have received a UPCS inspection, the Development received a UPCS score of at least 80 on its most recent Department REAC inspection and all compliance issues associated with that inspection have been resolved; or for Developments whose most recent Department inspection is an NSPIRE inspection, the Development must have received a NSPIRE score of at least 75 and all compliance issues associated with that inspection must have been resolved;

(5) The Development is operating in accordance with the accessibility requirements of Section 504, the Rehabilitation Act of 1973 (29 U.S.C. Section 794), as specified under 24 C.F.R. Part 8, Subpart C, or operating under the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" Federal Register 79 FR 29671; and

(6) The Development is not Transitional Housing as defined in ~~the 2018 Uniform Multifamily Rules~~Chapter 11 of this title.