

**TDHCA Board Approved *Draft* of 10 TAC Chapter 10,  
Uniform Multifamily Rules, Subchapter F §§10.601-10.626  
concerning Compliance Monitoring Rules**

Disclaimer

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

The rules are scheduled to be published in the September 27 edition of the *Texas Register* and will constitute the official version for purposes of public comment. The version herein should not be relied upon as the basis for public comment. The public comment period shall be September 27 – October 28.

TITLE 10                    COMMUNITY DEVELOPMENT  
PART 1                      TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 10                UNIFORM MULTIFAMILY RULES  
SUBCHAPTER F              COMPLIANCE MONITORING

§10.601. Compliance Monitoring Objectives and Applicability. ....3  
 §10.602. Notice to Owners and Corrective Action Periods.....4  
 §10.603. Notices to the Internal Revenue Service (HTC Developments during the Compliance Period). ....5  
 §10.604. Options for Review. ....5  
 §10.605. Compliance Committee. ....6  
 §10.606. Contract and Construction Monitoring.....6  
 §10.607.Reporting Requirements. ....7  
 §10.608. Record Keeping Requirements. ....8  
 §10.609.Notices to the Department.....9  
 §10.610.Tenant Selection Criteria.....9  
 §10.611.Determination, Documentation and Certification of Annual Income..... 10  
 §10.612. Tenant File Requirements..... 11  
 §10.613. Lease Requirements. .... 13  
 §10.614.Utility Allowances. .... 14  
 §10.615.Managing Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments. .... 20  
 §10.616.Household Unit Transfer Requirements for All Programs..... 21  
 §10.617.Affirmative Marketing Requirements..... 22  
 §10.618.Onsite Monitoring..... 23  
 §10.619.Monitoring for Social Services. .... 24  
 §10.620.Monitoring for Non-Profit Participation or HUB Participation..... 25  
 §10.621.Property Condition Standards..... 25  
 §10.622.Special Rules Regarding Rents and Rent Limit Violations..... 27  
 §10.623.Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.29  
 §10.624.Events of Noncompliance..... 30  
 §10.625.Liability. .... 33  
 §10.626. Temporary Suspensions of Sections of this Subchapter. .... 33

### **§10.601. Compliance Monitoring Objectives and Applicability.**

(a) The objectives of the Department in performing regular monitoring of affordable rental housing are:

(1) To provide for monitoring that meets applicable requirements of:

(A) The U. S. Department of Housing and Urban Development (HUD);

(B) The U. S. Department of the Treasury (Treasury);

(C) The Internal Revenue Service (the “IRS”); and

(D) Applicable state laws and rules.

(2) To enable the Department to report information to HUD, Treasury, the IRS, and the Governing Board, as required, regarding the condition and operations of such developments;

(3) To enable the Department to communicate with responsible persons regarding the condition and operation of their developments and understand clearly, with a documented record, how they are performing in meeting their obligations;

(4) To identify matters of noncompliance so that they can be appropriately addressed and to assist in targeting issues that may require compliance assistance education;

(5) To ensure that responsible persons understand the compliance status of their developments and the implications of such status;

(6) To articulate and communicate clear standards to promote the maintenance and operation of such developments in a manner that meets the high standards of the Department’s affordable rental programs; and

(7) To provide a transparent system whereby all interested parties, including tenants, community organizations, local governmental entities, and the affordable housing industry, may find accountability, consistency, and an awareness of the high quality standards of affordable housing in the State of Texas.

(b) This subchapter applies to the monitoring of affordable rental housing under the programs described in paragraphs (1)-(7) of this subsection:

(1) The Housing Tax Credit Program (HTC);

(2) The HOME Investment Partnerships Program (HOME);

(3) The Tax Exempt Bond Program (Bond);

(4) The Housing Trust Fund Program (HTF);

(5) The Tax Credit Assistance Program (TCAP);

(6) The Tax Credit Exchange Program (Exchange); and

(7) The Neighborhood Stabilization Program (NSP).

(c) There are two key aspects of ongoing monitoring activity, the physical condition of the developments and whether they are being operated in documented compliance with program requirements.

- (d) The results of the Department’s monitoring activities will be timely and properly documented.
- (e) The Department may contract with an independent third party to monitor a Development during its construction or rehabilitation and during its operation for compliance with any conditions imposed by the Department in connection with the award of any Department funds, including allocations of housing tax credits, and appropriate state and federal laws.

**§10.602. Notice to Owners and Corrective Action Periods.**

- (a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) or if the Department discovers through audit, inspection, review or any other manner that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, this subchapter, or other program rules and regulations, including §42 of the Internal Revenue Code.
- (b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a thirty (30) day corrective action period for failure to file the AOCR and a ninety (90) day corrective action period for other violations. During the corrective action period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the event of noncompliance has been corrected. Documentation of correction must be received during the corrective action period for an event to be considered corrected during the corrective action period. The Department may extend the corrective action period for up to six (6) months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original ninety (90) day corrective action period.
- (c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department).
- (d) Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department’s web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner’s sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property’s CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.
- (e) Unless otherwise required by law, events of noncompliance will not be reported to the IRS, referred for enforcement action, considered cause for debarment, or reported in an applicant’s compliance history or previous participation review, until after the end of the corrective action period established in the notice described in this section.

### **§10.603. Notices to the Internal Revenue Service (HTC Developments during the Compliance Period).**

(a) Even when an event of noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than forty-five (45) days after the end of the correction period specified in the Notice to Owner (including any extensions permitted by the Department) but will not be filed before the end of the correction period. The Department will indicate on IRS Form 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the noncompliance.

(b) The Department will retain records of noncompliance or failure to certify for six (6) years beyond the Department's filing of the respective IRS Form 8823. (c) The Department will send the Owner of record copies of any IRS Forms 8823 submitted to the IRS. Copies of Forms 8823 may be submitted to the syndicator provided that the Department has the correct contact information.

### **§10.604. Options for Review.**

(a) If, during the corrective action period, an Owner supplies evidence of continual compliance, the issue of noncompliance will be dropped and no further action will be taken, i.e., for HTC properties, Form 8823 will not be filed with the IRS.

(b) If, following the submission of corrective action documentation, Compliance staff continues to find the Owner in noncompliance, the Owner may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to the inclusion or exclusion of tenant income, assets or appropriate household size, the National Center for Housing Management (NCHM) can be contacted. In order to obtain guidance from NCHM, the requestor must have an active Certified Occupancy Specialist designation. If no representative of the owner has this designation, Department staff may make the request on the owner's behalf.

(2) If the compliance matter is related to the Housing Tax Credit program, owners may contact the IRS Program Analyst for guidance or request that Department staff contact the IRS for general guidance without identifying the taxpayer. The issue will be handled in accordance with the guidance received from the IRS.

(3) If the compliance matter is related to the HOME or NSP program, owners may contact the U.S. Department of Housing and Urban Development Texas Field Office for guidance. The issue will be handled in accordance with guidance received from HUD.

(4) Owners may request review by the Department's Compliance Committee, as set out in §10.605 of this section.

(5) Owners may request Alternative Dispute Resolution (ADR). An Owner may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title (relating to Alternative Dispute Resolution and Negotiated Rulemaking). Note that even if the Department and Owner are engaged in ADR, the Department must meet Treasury Regulation §1.42-5 and file Form 8823 within forty-five (45) days after the end of the corrective action period. Therefore, it is possible that the Owner and Department may still be engaged in ADR when a Form 8823 is filed. Should this

happen, the form, including all Owner-supplied documentation, will be sent to the IRS with an explanation that the Owner disagrees with the Department's assessment and is pursuing ADR. Although the violation will be reported to the IRS within the required timeframes, it will not be considered part of an applicant's compliance history nor subject to administrative penalties pending the ADR process.

#### **§10.605. Compliance Committee.**

(a) The Compliance Committee is a committee of three to five persons appointed by the Executive Director. The Compliance Committee is established to provide independent review of certain compliance issues as provided by this section. Staff from the Legal and the Compliance Division will not be appointed to the committee but will be available to provide guidance to Department staff.

(b) Informal discussion with Compliance Monitoring staff. If the responsible person has questions or disagreements regarding any compliance issues, they should first try to resolve them by discussing them with the Compliance Monitoring staff, including, as needed, the Chief of Compliance.

(c) Informal discussion with the Compliance Committee. A responsible person may request an informal meeting with the Compliance Committee if the informal discussion with the Compliance Monitoring staff did not resolve the issue.

(d) Compliance Committee Process and Timeline.

(1) At any time, the responsible person may call or request an informal conference with the Compliance Monitoring staff and/or the Chief of Compliance.

(2) If a call or an informal conference with the Compliance Monitoring staff does not result in a resolution of the issue, the responsible person may, within thirty (30) days of the call or informal conference with Compliance Monitoring staff, request a meeting with the Compliance Committee.

(3) If timely requested in accordance with this section, the Compliance Committee will hold an informal conference with the responsible person. A responsible person should not offer evidence, documentation, or information to the Committee that was not presented to Compliance Monitoring staff during the informal staff conference. If additional information is offered, the Committee may disallow the information or refer the matter back to Compliance Monitoring staff to allow review of the additional information prior to any consideration by the Committee.

(4) If a meeting with the Compliance Committee does not result in a resolution, matters related to a compliance requirement, other than those required by federal regulation, may be appealed directly to the Board.

#### **§10.606. Contract and Construction Monitoring.**

(a) The Department will monitor the entire construction phase for all applicable requirements according to the level of risk. After Final Construction during the Affordability Period, the Department will periodically monitor the Development to assure that that the Owner maintains compliance with applicable accessibility laws and amenities as required in the Development's Land Use Restriction Agreement.

(b) Owners are required to submit evidence of final construction within thirty (30) days of completion in a format prescribed by the Department. In addition, the Architect of Record must submit a certification that

the Development was built in compliance with all applicable laws, and the Engineer of Record (if applicable) must submit a certification that the Development was built in compliance with the design requirements.

(c) The Department will conduct a final inspection after receipt of notification of final construction. During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable accessibility laws. In addition, a Uniform Physical Condition Standards inspection may be completed.

(d) IRS Form(s) 8609 and final retainage will not be released until the Owner receives written notice from the Department that all noted deficiencies have been resolved.

### **§10.607.Reporting Requirements.**

(a) The Department requires reports to be submitted electronically through the Department's web-based Compliance Monitoring and Tracking System (CMTS) and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be filed no later than September 1st of the year following the award. The Department will provide general instruction regarding the electronic transfer of data.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (d) of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2011. The first report is due April 30, 2013, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of five parts:

(1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules. HTC Developments during their Compliance Period will also be required to provide the contact information of the syndicator in the Annual Owner's Compliance Report;

(2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The certified answers to the questions on Part C satisfy this requirement;

(4) Part D "Owner's Financial Certification." Developments funded by the Department must annually provide and certify the data requested in the Owner's Financial Certification; and

(5) Part E "Form 8703." Tax exempt bond properties must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(d) Parts A, B, C, D and E of the Annual Owner's Compliance Report must be provided to the Department no later than April 30th of each year, reporting data current as of December 31st of the previous year (the reporting year).

(e) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences.

(f) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(g) All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

(h) Exchange developments must submit Form 8609 with lines 7, 8(b), 9(b), 10(a), 10(c), and 10(d) completed thirty (30) days after the Department issues the executed form(s). If an Owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings in the project. An owner may request to change the election made on line 8(b) only once during the Compliance Period. The request will be treated as non-material amendment, subject to the fee described in §10.901 of this chapter (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).

### **§10.608. Record Keeping Requirements.**

(a) Development Owners must comply with program recordkeeping requirements. Records must include sufficient information to comply with the reporting requirements of §10.607 of this chapter (relating to Reporting Requirements) and any additional programmatic requirements. HTC Development Owners must retain records sufficient to comply with the reporting requirements of Treasury Regulation 1.42-5(b)(1). Records must be kept for each qualified Low-Income Unit and building in the Development, commencing with lease up activities and continuing on a monthly basis until the end of the Affordability Period.

(b) Each Development that is administered by the Department must retain records as required by the specific funding program rules and regulations and executed contracts or Land Use Restriction Agreements. In general, retention schedules include but are not limited to the provision of subsections (c) - (f) of this section.

(c) HTC records must be retained for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building (§1.42-5(b)(2) of the Code).

(d) Retention of records for NSP and HOME rental Developments must comply with the provisions of 24 CFR §92.508(c), which generally requires retention of rental housing records for five (5) years after the Affordability Period terminates.

(e) Housing Trust Fund (HTF) rental Developments must retain tenant files for at least three (3) years beyond the date the tenant moves from the Development. Records pertinent to the funding of the award, including, but not limited to, the Application and Development costs and documentation, must be retained for at least five (5) years after the Affordability Period terminates.

(f) Other rental Developments funded or administered in whole or in part by the Department must comply with record retention requirements as required by rule or deed restriction.

(g) All required records must be made available on site when an onsite monitoring occurs.

### **§10.609. Notices to the Department.**

If any of the events described in paragraphs (1) – (5) of this section occur, written notice must be provided to the Department within the respective timeframes:

(1) Written notice must be provided at least thirty (30) days prior to any proposed sale, transfer, or exchange of the Development or any portion of the Development, and the Department must give its prior written approval to any such sale, transfer, or exchange, which will include a previous participation review on the proposed new ownership;

(2) Notification must be provided within thirty (30) days following the event of any casualty loss, in whole or in part, to the Development, using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster);

(3) Owners of Bond Developments shall notify the Department of the date on which 10 percent of the Units are occupied and the date on which 50 percent of the Units are occupied, and notice must occur within ninety (90) days of such dates;

(4) Within thirty (30) days after a foreclosure, the Department must be provided with documentation evidencing the foreclosure and a rent roll establishing occupancy on the day of the foreclosure; and

(5) Within ten (10) days of a change in the contact information (including contact persons, physical addresses, mailing addresses, email addresses and/or phone numbers) for the Ownership entity, management company, and/or Development the Department's Compliance Monitoring and Tracking System must be updated.

### **§10.610. Tenant Selection Criteria.**

(a) Owners must maintain written tenant selection criteria. The criteria cannot:

(1) Exclude an individual or family from admission to the Development solely because the individual or family participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1437f), or other federal rental assistance program;

(2) Use a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than 2.5 times the individual's or family's share of the total monthly rent payable to the Owner of the Development. However, if a family's share of the rent is \$50 or less, Owners may require a minimum annual income of \$2,500; and

(3) In accordance with the Violence Against Women Reauthorization Act of 2013, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(b) The criteria must:

(1) State that the Development will comply with state and federal fair housing and antidiscrimination laws;

(2) Apply screening criteria uniformly (rental, credit, and/or criminal history), including employment policies, and in a manner consistent with the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules;

(3) Be reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease; and

(4) For all elderly Developments, must specify age requirements and demonstrate a commitment to operate the Development as Housing for Older Persons. Units in a Development as Housing for Older Persons may not lease units to households not meeting the criteria of qualified elderly except as expressly permitted by written guidance from HUD.

(c) Owners of HOME Developments must also:

(1) Provide any rejected applicant written notification of the grounds for rejection within thirty (30) days; and

(2) Maintain a written waiting list and select tenants from the waiting list in chronological order, insofar as is practicable.

#### **§10.611.Determination, Documentation and Certification of Annual Income.**

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program administered by HUD, using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3 as amended from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing Form 8823, the IRS guidance will be controlling. At the time of program designation as a low-income household, Owners must certify and document household income. In general, all low-income households must be certified prior to move in. Certification and documentation of household income is an Owner responsibility, even if the Owner is using a manager's services to handle tenant intake and leasing. Accordingly, Owner's should ensure that they hire competent and properly trained managers and that they exercise appropriate oversight of any manager's activities.

(b) For the initial certification of a household residing in a HOME unit at a Development committed HOME funds after August 23, 2013, owners must examine at least 2 months of source documents evidencing annual income (e.g. wage statement, interest statement, unemployment compensation).

#### **§10.612. Tenant File Requirements.**

(a) At the time of program designation as a low-income household, typically at initial occupancy, Owners must create and maintain a file that at a minimum contains:

(1) A Department approved Income Certification form signed by all adults. At the time of program designation as a low-income household, Owners must certify and document household income. In general, all low-income households must be certified prior to move in. The Department requires the use of the TDHCA Income Certification form, unless the property also participates in the Rural Development or a Project Based HUD Program, in which case, the other program's Income Certification form will be accepted;

(2) Documentation to support the Income Certification form including, but not limited to, applications, first hand or third party verification of income and assets, and documentation of student status (if applicable). The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form. Owners should scrutinize these documents to identify and address any obvious attempts at forgery, alteration, or generation of falsified documents;

(3) A lease with all necessary addendums to ensure that compliance with applicable federal regulations and §10.613 of this chapter (relating to Lease Requirements); and

(4) The Department's Fair Housing Disclosure Notice form. This notice must be presented to the household at the time of application for occupancy and must be executed no more than one-hundred twenty (120) days prior to the effective date of the lease. This requirement pertains to all households taking initial occupancy of a low-income unit on a Development administered by the Department including households transferring within the same Development. If the household is not provided this notice prior to move in or transfer, the Department will consider the event corrected if the Fair Housing Disclosure Notice is provided to the household no more than one-hundred twenty (120) days and no less than thirty (30) days prior to the date that the household is legally obligated to provide written notice of their intention to terminate or renew their current lease.

(b) Annually thereafter:

(1) Throughout the Affordability Period, all Owners of Housing Tax Credit, TCAP and Exchange Developments must collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form.

(2) During the Compliance Period for all Housing Tax Credit, TCAP, and Exchange Developments and throughout the affordability period for all Bond developments and HOME Developments committed funds after August 23, 2013, Owners must collect and maintain current student status data for each low-income household. This information can be collected on the Department's Annual Eligibility

Certification or the Department's Certification of Student Eligibility form or the Department's Income Certification form. Throughout the Compliance Period for HTC, TCAP, and Exchange developments, low-income households comprised entirely of full-time students must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. For Bond developments, if the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). For HOME Developments committed funds after August 23, 2013, an individual does not qualify as a low-income or very low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.

(3) The types of properties described in subparagraphs (A)- (D) of this paragraph are required to recertify annually the income of each low-income household using a Department approved Income Certification form and documentation to support the Income Certification (see paragraphs (a)(1) –(2) of this subsection):

(A) Mixed income Housing Tax Credit, TCAP and Exchange projects (as defined by line 8(b) of IRS Form(s) 8609 and accompanying statements, if any) that have not completed the fifteen (15) year Compliance Period;

(B) All Bond developments with less than 100 percent of the units set aside for households with an income less than 50 percent or 60 percent of area median income.

(C) HTF Developments with Market Rate units. However, HTF Developments with other Department administered programs will comply with the requirements of the other program. Example 612(1): If a Development is mixed income HTF and 100 percent low-income HTC, all households must be certified at move in. Then, once a calendar year, the Owner must collect the data required by and in accordance with the paragraphs (b)(1) and (2) of this subsection.

(D) HOME Developments. Refer to paragraph (c) of this subsection.

(c) Ongoing tenant file requirements for HOME Developments:

(1) HOME Developments must complete a recertification with verifications of each HOME assisted Unit every sixth year of the Development's affordability period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME Development affordability period is the effective date on the first page of the HOME LURA. For example, a HOME Development with a LURA effective date of May 2001 will have the years of the affordability determined in Example 612(2):

(A) Year 1: May 15, 2001 - May 14, 2002;

(B) Year 2: May 15, 2002 - May 14, 2003;

(C) Year 3: May 15, 2003 - May 14, 2004;

(D) Year 4: May 15, 2004 - May 14, 2005;

(E) Year 5: May 15, 2005 - May 14, 2006;

(F) Year 6: May 15, 2006 - May 14, 2007;

(G) Year 7: May 15 2007 - May 14, 2008;

- (H) Year 8: May 15, 2008 - May 14, 2009;
- (I) Year 9: May 15, 2009 - May 14, 2010;
- (J) Year 10: May 15, 2010 - May 14, 2011;
- (K) Year 11: May 15, 2011 - May 14, 2012; and
- (L) Year 12: May 15, 2012 - May 14, 2013.

(2) In the scenario described in paragraph (1) of this subsection, all households in HOME Units must be recertified with source documentation during the sixth (6<sup>th</sup>) and twelfth (12<sup>th</sup>) years or between May 15, 2006, to May 14, 2007, and between May 15, 2012, and May 14, 2013.

(3) In the intervening years the Development must collect a self certification by the effective date of the original Income Certification from each household that is assisted with HOME funds, Example 612(3): a household moved into a HOME unit on June 10, 2010, the household's self certification must be completed by June 10, 2011, and the household must be recertified with source documentation effective June 10, 2012. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's Income Certification form will be accepted. If the household reports on their self certification that their annual income exceeds the current 80 percent applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then an annual income recertification with verifications is required.

### **§10.613. Lease Requirements.**

(a) Eviction and/or termination of a lease. For HTC Developments, IRS Revenue Ruling 2004-82 prohibits the eviction or termination of tenancy of low-income households for other than good cause throughout the entire Affordability Period, and for three (3) years after termination of an extended low-income housing commitment. Owners executing or renewing leases after November 1, 2007, shall specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited.

(b) For HOME and NSP Developments, the HOME Final Rule (and as adopted by Texas NSP) prohibits Owners from evicting low-income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. Owners executing or renewing leases after November 1, 2007, shall specifically state in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253.

(c) The Department does not determine if an Owner has good cause or if a resident has violated the lease terms. If there is a challenge to a good cause eviction, that determination will be made by a court of competent jurisdiction or an agreement of the parties in arbitration. The Department will rely on the court decision or the agreement of the parties.

(d) HTC and Bond Developments must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of HTC Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) For HOME and NSP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that, all households at HOME and NSP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355 and §570.487(c)).

(g) All Owners shall comply with the lease requirements found in Section 601 of the Violence Against Women Reauthorization Act of 2013 (“VAWA 2013”). In general, owners may not construe an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking as a serious or repeated violation of a lease term by the victim or threatened victim or as good cause for terminating tenancy. However, in accordance with VAWA 2013, owners may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the unit or other affiliated individual as defined in the VAWA 2013.

(h) Leasing of HOME units by organizations that, in turn, rent those units to individuals is not permissible for HOME developments committed funding after August 23, 2013.

(i) Housing Tax Credit units leased to an organization through a supportive housing program where the owner receives a rental payment for the unit regardless of physical occupancy will be found out of compliance if the unit remains vacant for over 30 days. The unit will be found out of compliance under the finding “Violation of the Unit Vacancy Rule.”

(j) It is a Development Owner’s responsibility at all times to know what it has agreed to provide by way of common amenities, unit amenities, and services.

(k) A Development Owner shall provide each household, at the time of execution of an initial lease and whenever there is a subsequent change in common amenities, unit amenities, or required services, a notice describing those amenities and services.

(l) The notice required under subsection (k) of this section must also contain the following:

(1) “The Texas Department of Housing and Community Affairs (the “Department”) is responsible for monitoring this Development for compliance with any land use restriction agreement setting forth required common amenities, unit amenities, or services in connection with programs administered by the Department.”; and

(2) The Department contact information including the mailing address, website and toll free phone number.

#### **§10.614. Utility Allowances.**

(a) The Department will monitor to determine if Developments comply with published rent limits which include an allowance for tenant paid utilities. For HTC, TCAP, and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company and the amount of the bill is based on an allocation method or "Ratio Utility Billing System" (RUBS), this monthly amount will be considered a mandatory fee. For HTC, TCAP, and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company, and the amount of the bill is based on the tenant's actual consumption, Owners may account for the utility in an allowance. The rent, plus all mandatory fees, plus an allowance for those utilities paid by the resident directly to a utility provider, must be less than the allowable limit. For HOME, Bond, HTF, and NSP buildings, Owners may account for utilities paid directly to the Owner or to a third party billing company in their utility allowance. Where residents are responsible for some or all of the utilities--other than telephone, cable, and internet--Development Owners must use a utility allowance that complies with both this section and the applicable program regulations.

(b) An Owner may not change utility allowance methods or start charging residents for a utility without prior written approval from the Department. Example 614(1): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year 8, 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. The Department will respond by approving or denying within ninety (90) days of the date on which the party making the request has completed the questionnaire and provided all required supporting documentation and responded to any Department requests for clarification or additional information.

(c) Rural Housing Services (RHS) buildings or buildings with RHS assisted tenants. 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 tenants.

(d) HUD-Regulated buildings layered with any Department program. If neither the building nor any tenant in the building receives RHS rental assistance payments, and the rents and the utility allowances of the building are reviewed 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.

(e) HOME units at HOME developments committed funds after August 23, 2013 must use the HUD Utility Schedule Model. The utility allowance will be calculated by the Department on an annual basis and provided to the Owner with a deadline for implementation.

(f) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in paragraphs (1) - (5) of this subsection:

(1) The utility allowance established by the applicable Public Housing Authority (PHA) for the Section 8 Existing Housing Program. The Department will utilize Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(A) 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(2):

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 consist of twenty buildings, ten of which are Apartments (5+ units) and the other ten buildings are Duplexes. The Owner must use the correct schedule for each building type..

(B) 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 (5) years.

(C) 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.

(D) If an Owner chooses to implement a methodology as described in paragraph (2), (3), (4), or (5) of this subsection, 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.

(E) In general, if the property is located in an area that does not have a municipal, county, or regional housing authority that publishes a utility allowance schedule for the Section 8 Existing Housing Program, Owners must select an alternative methodology. In the event the property is located in an area without a clear municipal or county housing authority the Department may permit the use of another housing authority's utility allowance schedule on a case by case basis. Prior approval from the Department is required and the owner must obtain approval on an annual basis.

(2) A written estimate from a local utility provider. If there are multiple utility companies that service the Development, the local provider must be a residential utility company that offers service to the residents of the Development requesting the methodology. The Department will use the Texas Electric Choice website: <http://www.powertochoose.org/> to verify the availability of service. If the utility company is not listed as a provider in the Development's ZIP code, the request will be denied. Additionally, the estimate must be signed by the utility provider representative and specifically include all "component charges" for providing the utility service. Receipt of the information from the utility provider begins the ninety (90) day period after which the new utility allowance must be used to compute gross rent;

(3) The HUD Utility Schedule Model. A utility estimate can be calculated by using the "HUD Utility Schedule Model" that can be found at <http://www.huduser.org/portal/resources/utlmodel.html> (or successor Uniform Resource Locator). Each item on the schedule must be displayed out to two decimal places. The total allowance must be rounded up to the next whole dollar amount. The rates used must be no older than the rates in effect sixty (60) days prior to the beginning of the ninety (90) day period in which the Owner intends to implement the allowance. For Owners calculating a utility allowance under this methodology, the model, along with all back-up documentation used in the model, must be submitted to the Department, on a Compact Disc or flash drive, within the timeline described in subsection (h) of this section. The date entered as the "Form Date" on the "Location" tab of the spreadsheet will be the date used to begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent;

(4) An Energy Consumption Model. The utility consumption estimate must be calculated by a properly licensed mechanical engineer or an individual holding a valid Residential Energy Service Network (RESNET) or Certified Energy Manager (CEM) certification. 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 orientation, design and materials, mechanical systems, appliances, and characteristics of building location. Use of the Energy Consumption Model is limited to the building's consumption data for the twelve (12) month period ending no earlier than sixty (60) days prior to the beginning of the ninety (90) day period and utility rates used must be no older than the rates in place sixty (60) days prior to the beginning of the ninety (90) day period. In the case of a newly constructed or renovated building with less than twelve (12) months of consumption data, the qualified professional may use consumption data for the twelve (12) month period from units of similar size and construction in the geographic area in which the building containing the units is located. The ninety (90) day period after which the new utility allowance must be used to compute gross rent will begin sixty (60) days after the end on the last month of the twelve (12) month period for which data was used to compute the estimate; and

(5) 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 rates, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method."

(g) For a Development Owner to use the Actual Use Method they must:

(1) Provide a minimum sample size of usage data for at least 5 Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type whichever is greater. Example 614(3): A Development has 20 three bedroom/one bath Units, and 80 three bedroom/two bath Units. Each bedroom/bathroom equivalent Unit is within 120 square feet of the same floor area. Data must be supplied for at least five of the three bedroom/one bath Units, and sixteen of the three bedroom/two bath Units. If there are less than five Units of any Unit Type, data for 100 percent of the Unit Type must be provided;

(2) Scan the information in subparagraphs (A) - (E) of this paragraph onto a CD and submit it to the Department no later than the beginning of the ninety (90) day period after which the Owner intends to implement the allowance, reflecting data no older than sixty (60) days prior to the ninety (90) day implementation period. Example 614(4): The utility provider releases the information regarding electric usage at Westover Townhomes on February 5, 2010. The data provided is from February 1, 2009, through January 31, 2010. The Owner must submit the information to the Department no later than March 31, 2010, for the information to be valid;

(A) 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 actual kilowatt usage for each month of the twelve (12) month period for each Unit for which data was obtained, and the rates in place at the time of the submission;

(B) A copy of the request to the utility provider (or billing entity for the utility provider) to provide usage data;

(C) 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;

(D) 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

(E) Documentation of the current utility allowance used by the Development.

(3) 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 subparagraphs (A) - (E) of this paragraph;

(A) If data is obtained for more than 20 percent of all units or there are more than 5 of a Unit Type, all data will be used to calculate the allowance;

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

(C) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last twelve (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;

(D) 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

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

(4) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in paragraph (2) of this subsection;

(5) Receipt of approval from the Department will begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent; and

(6) For newly constructed Developments or Developments that have Units which have not been continuously occupied, the Department, on a case by case basis, may use consumption data for Units of similar size and construction in the geographic area to calculate the utility allowance.

(h) Effective dates. If the Owner uses the methodologies as described in subsection (c), (d), or (f)(1) of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due at least ninety (90) days after the change. For methodologies as described in subsection (f)(2) - (5) of this section, 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 ninety (90) day period in which the Owner intends to implement the utility allowance.

(i) 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 ninety (90) days after the change.
  - (3) HOME Developments committed funds after August 23, 2013. On an annual basis, the Department will calculate the utility allowance using the HUD Utility Schedule Model.
  - (4) 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 update is submitted to the Department, the Owner must post the utility allowance estimate in a common area of the leasing office at the Development. 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. If approved, changes to the allowance can be implemented ninety (90) days after the request was submitted to the Department and provided to the residents.
  - (5) 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.
- (j) Combining Methodologies. With the exception of HUD regulated buildings, HOME units at HOME Developments committed funds after August 23, 2013 and RHS buildings, 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 (electric, gas, etc.). 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.
- (k) Increases in Utility Allowances for Developments with HOME or NSP funds. Unless otherwise instructed by HUD, the Department will permit owners to implement changes in utility allowance in the same manner as Housing Tax Credit (HTC) Developments.
- (l) The Owner shall maintain and make available for inspection by the tenant, 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 tenant at the convenience of both the Owner and tenant.
- (m) If Owners want to utilize the HUD Utility Schedule Model, the Written Local Estimate or the Energy Consumption Model to establish the initial utility allowance for the Development, no more than one-hundred eighty (180) days and no less than ninety (90) days prior to the commencement of leasing activities, the Owner must submit utility allowance documentation for Department approval. This subsection does not

preclude an Owner from changing to one of these methods after commencement of leasing in accordance with subsection (b) of this section.

(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.

#### **§10.615.Managing Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments.**

(a) Under the Code, HTC Development Owners elect a minimum set-aside requirement of 20/50 or 40/60 (20 percent of the Units restricted to the 50 percent income and rent limit or 40 percent of the Units restricted at the 60 percent income and rent limits). The minimum set-aside elected sets the maximum income and rent limits for the low-income units on the Development. Many Developments have additional income and rent requirements (i.e., 30 percent, 40 percent and 50 percent) that are lower than the minimum set-aside requirement. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's LURA. The Department will examine the actual gross rent and income levels of all households to determine if the additional income and rent requirements of the LURA are met.

(b) For 100 percent HTC Developments (developments with all units restricted to income eligible persons at restricted rents) that are not required to perform annual recertification, regardless of the requirements stated in the Development's LURA, the additional rent and occupancy restrictions will be monitored as follows:

(1) Households initially certified at the 30 percent income and rent limits. Households will maintain the designation they had at initial move-in. The Unit will continue to meet the 30 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 30 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 30 percent limit;

(2) Households initially certified at the 40 percent income and rent limits. Households will maintain the designation they had at initial move in. The Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 40 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 40 percent limit; and

(3) Households initially certified at the 50 percent income and rent limits. Households will maintain the designation they had at initial move in. The Unit will continue to meet the 50 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 50 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 50 percent limit.

(c) Mixed Income HTC Developments with Market Units will be monitored as described in paragraphs (1) and (2) of this subsection:

(1) The HTC program requires Mixed Income projects with Market Units to comply with the Available Unit Rule. When a household's income at recertification exceeds 140 percent of the applicable current income limit elected by the minimum set-aside, the owner must comply with the Available Unit Rule

and lease the next available unit (same size or smaller) in the building to a low-income household to maintain compliance. For HTC projects that are required to perform annual recertifications, the additional rent and occupancy restrictions will be monitored as follows:

(A) Households initially certified at the 30, 40, or 50 percent income and rent limits will maintain the designation they had at initial move in unless the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside. The Unit will continue to meet the designation from the initial certification provided that the Owner does not charge gross rent in excess of the additional rent and occupancy rent limit;

(B) The household will not be required to vacate the Unit for other than good cause. When the household vacates the Unit, the next available Unit on the Development must be leased in a manner so as to meet the Development's additional rent and occupancy restrictions; and

(C) If the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside, the household must be redesignated as over income and the Next Available Unit Rule must be followed. Example 615(1): A household was initially certified at the 40 percent income limit at move in. The household's income increases at recertification above the 40 percent income limit to the 50 percent income limit. The Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge rent in excess of the 40 percent rent limit. When the household vacates the Unit, the Next Available Unit on the Development is leased to a household with an income and rent less than the 40 percent limits.

(2) This subsection does not require HTC Developments to lease more Units under the additional occupancy restrictions than established in their LURA. Example 615(2): If a Development is required to lease 10 units at the 40 percent income and rent levels and has satisfied the requirement, the owner is not required to offer the 40 percent rent to other households, even if their income is less than the 40 percent income limit.

(d) Units at 80 percent area median income and rent on HTC developments. In certain years, the Department's Qualified Allocation Plan provided incentives to lease 10 percent of the development's Market Rate units to households at 80 percent income and rents. This section provides guidance for implementation. If the LURA requires 10 percent of the Market Rate units be leased to households at 80 percent income and rent limits, the owner must certify the 80 percent households at the time of move in only. Recertifications will not be required. Student rules do not apply to units occupied by 80 percent households. Noncompliance with the requirement to lease to 80 percent households is not reportable to the IRS on Form 8823 but will be cited as noncompliance under the event "Development failed to meet additional state required rent and occupancy restrictions."

#### **§10.616. Household Unit Transfer Requirements for All Programs.**

(a) The requirements and restrictions regarding household transfers for HTC, Exchange, and TCAP Developments are based on whether the project is 100 percent low-income or mixed income and if the owner elected to treat buildings in the project as part of a multiple building project. To determine if a Development is a multiple building project, refer to the election on IRS form 8609 line 8(b) and accompanying statements (if any). If forms 8609 have not yet been issued by the Department and filed by the owner, each building is its own project.

(1) 100 percent low-income multiple building projects: Households may transfer to any unit in a 100 percent low-income multiple building project and retain their program designation. The household does not need to be and should not be certified at the time of transfer. The move in date remains the date the household was first designated under the program.

(2) Each building is its own project (100 percent low-income and mixed income projects). To retain its low-income status, at the time of transfer, a household must be certified and have a current annual income less than the income limit established by the minimum set aside the owner selected.

(3) Mixed income multiple building projects: Low-income households retain their program designation when they transfer to any unit in the multiple building project if at the last annual certification their income was less than 140 percent of area median income level set by the minimum set aside.

(b) Household transfers for Bond, HTF, HOME, and NSP. For Bond, HTF, HOME, and NSP Developments, households may transfer to any Unit within the Development. A certification is not required at the time of transfer. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved onto the Development. If the Development is layered with Housing Tax Credits, you are required to use the transfer guidelines described in subsection (a) of this section (relating to Household Unit Transfer Requirements).

(c) Household Transfers in the Same Building for all Programs. A Household may transfer to a new Unit within the same building (for the HTC program within the meaning of IRS Notice 88-91). The unit designations will swap status. Example 616(1): Building 1 has 4 low-income Units. Units 1 through 3 are occupied by low-income households and Unit 4 is a vacant low-income unit. The household in Unit 2 moves to Unit 4 and the Unit designations swap status. Unit 2 is now a vacant low-income unit.

### **§10.617.Affirmative Marketing Requirements.**

(a) Owners of Developments with 5 or more total units must use an Affirmative Fair Housing Marketing Plan to attract prospective applicants of all minority and non-minority groups in the housing market area regardless of their race, color, religion, sex, national origin, disability, familial status, or religious affiliation. Racial groups to be marketed to may include White, African American, Native American, Alaskan Native, Asian, Native Hawaiians, or Other Pacific Islanders. Other groups in the housing market area who may be subject to housing discrimination include, but are not limited to, veterans, Hispanic or Latino groups, persons with disabilities, families with children, or persons with different religious affiliations. Owners are encouraged to use HUD Form 935.2A, and may use any version of this Form as applicable.

(b) The Affirmative Marketing Plan must identify:

(1) Which group(s) the Owner believes are least likely to apply for housing at the Development without special outreach;

(2) Organizations and groups in the area that serve persons with disabilities; and

(3) Certain HTC Developments must include methods for informing veterans about the availability of units.

(c) When identifying racial/ethnic minority groups the Development will market to, factors such as the characteristics of the housing's market area should be considered. Example 617(1): An Owner obtains census data showing that 6.5 percent of the city's total population is Asian Americans. However, the

Owner's demographic data for the Development shows that zero Asian American households are represented. The Owner chooses to identify Asian American groups as one of the groups least likely to apply at the Development without special outreach.

(d) The Affirmative Marketing Plan must identify specific media and community contacts that reach those groups designated as least likely to apply. At minimum, contact must be made annually but more frequent contact is encouraged. Community outreach contacts may include neighborhood, minority, veteran's organizations, or women's organizations, grass roots faith-based or community-based organizations, labor unions, employers, public and private agencies, disability advocates, or other groups or individuals well known in the community that connect with the identified group(s). Example 617(2): An Owner has identified the disabled as least likely to apply and has decided to send letters on a quarterly basis to the Case Manager at a non-profit organization coordinating housing for adults with developmental disabilities. Additionally, the Owner will advertise upcoming vacancies in a monthly newsletter circulated by an organization serving the hearing impaired..

(e) The Owner must assess the success of Affirmative Marketing efforts by annually reviewing the Development's demographics in relation to the housing area. The plan must be updated every five (5) years to fully capture demographic changes in the housing's market area.

(f) Owners must maintain records of marketing efforts which will be reviewed by the Department during onsite monitoring visits. Example 617(3): The Owner keeps copies of all quarterly correspondence mailed to the contacts or community groups identified in the Affirmative Marketing Plan. The letters are dated and addressed and show that the Owner is actively marketing vacancies, or a waiting list to the groups identified in the Owner's plan. Failure to maintain a reasonable Affirmative Marketing Plan and documentation of marketing efforts on an annual basis will result in a finding of noncompliance.

(g) If a Development does not have any vacant units, Affirmative Marketing is still required and Owners must maintain a waiting list. If a Development does not have any vacancies and the waiting list is closed, Affirmative Marketing is not required until a new vacancy occurs or the waitlist is opened.

#### **§10.618. Onsite Monitoring.**

(a) The Department may perform an onsite monitoring review of any low-income Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA, whichever is later. The Development Owner shall permit the Department access to the Development premises and records.

(b) The Department will perform onsite monitoring reviews of each low-income Development. The Department will conduct:

- (1) The first review of HTC, Exchange, and TCAP Developments by the end of the second calendar year following the year the last building in the Development is placed in service;
- (2) The first review of all Developments, other than those described in subsection (b)(1) of this section, as leasing commences;
- (3) Subsequent reviews at least once every three (3) years during the Affordability Period;
- (4) A physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units;

(5) Limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least forty-eight (48) hours notice will be provided); and

(6) Reviews, meetings, and other appropriate activity in response to complaints or investigations.

(c) The Department will perform onsite file reviews and monitor:

(1) Low-income resident files in each Development, and review the Income Certifications;

(2) The documentation the Development Owner has received to support the certifications;

(3) The rent records, and

(4) Any additional aspects of the Development or its operation that the Department deems necessary or appropriate.

(d) At times other than onsite reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low- Income Unit and may require a Development Owner to submit copies of the tenant files, including copies of the Income Certification, the documentation the Development Owner has received to support that certification, and the rent record for any low-income tenant.

(e) The Department will select the Low-Income Units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious alleged or suspected noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits.

#### **§10.619.Monitoring for Social Services.**

(a) If a Development's LURA requires the provision of social services, the Department will confirm this requirement is being met. Owners are required to maintain sufficient documentation to evidence that services are actually being provided. Documentation will be reviewed during onsite visits beginning with the second onsite review, and must be submitted to the Department upon request. Example 619(1): The Owner's LURA requires provision of onsite daycare services. The Owner maintains daily sign in sheets to demonstrate attendance and keeps a roster of the households that are regularly participating in the program. The Owner also keeps copies of all newsletters and fliers mailed out to the Development tenants that reference daycare services. Example 619(2): The Owner's LURA requires a monetary amount to be expended on a monthly basis for supportive services. The Owner maintains a copy of an agreement with a Supportive Service provider and documents the amount expended as evidence that this requirement is being met.

(b) A substantive modification of the scope of tenant services requires Board approval. Such requests must comply with procedures in §10.405 of this chapter (relating to Amendments and Extensions). It is not necessary to obtain prior written approval to change the provider of services unless the scope of services is

being changed. Failure to comply with the requirements of this section shall result in a finding of noncompliance.

(c) If the Development's LURA requires a monthly expenditure for the provision of services, the Department will monitor to confirm compliance. Includable costs to support the expenditure include those costs directly related to providing the service(s). Such costs can include, but are not limited to, the cost of contracting the services with a qualified provider, cost of notification of such services (for example, a monthly newsletter), other costs that can be documented and would only be incurred as a result of the service. An Owner cannot include any costs related to the normal expense of maintaining or operating a Development, utility bills of any kind, in-kind contributions or services, cleaning or contracted janitorial services, office supplies, cost of copier or fax, costs incurred for maintenance of machinery, or volunteer hours. This list is not inclusive, but any other costs identified by the Owner shall be reviewed for consistency with this subsection.

#### **§10.620. Monitoring for Non-Profit Participation or HUB Participation.**

(a) If a Development's LURA requires the material participation of a non-profit or Historically Underutilized Business (HUB), the Department will confirm whether this requirement is being met throughout the development phase and ongoing operations of the Development. Owners are required to maintain sufficient documentation to evidence that a non-profit or HUB so participating is in good standing with the Texas Comptroller of Public Accounts, Texas Secretary of State and/or IRS as applicable and that it is actually materially participating in a manner that meets the requirements of the IRS. Documentation may be reviewed during onsite visits or must be submitted to the Department upon request.

(b) If an Owner wishes to change the participating non-profit or HUB, prior written approval from the Department is necessary. The Annual Owner's Compliance Report also requires Owners to certify to compliance with this requirement. In addition, the IRS will be notified if the non-profit is not materially participating on a HTC Development during the Compliance Period.

(c) The Department does not enforce partnership agreements or other agreements between third parties or determine fund distributions of partnerships. These disputes are matters for a court of competent jurisdiction or other agreed resolution among the parties.

#### **§10.621. Property Condition Standards.**

(a) All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's Uniform Physical Condition Standards (UPCS) to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes.

(b) HTC Development Owners are required by Treasury Regulation §1.42-5 to report (through the Annual Owner's Compliance Report) any local health, safety, or building code violations. HTC Developments that fail to comply with local codes shall be reported to the IRS.

(c) The Department is required to report any HTC Development that fails to comply with any requirements of the UPCS or local codes at any time during the compliance period to the IRS on Form 8823. Accordingly, the Department will submit Form 8823 for any UPCS violation.

(d) Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that will allow the Department to reasonably determine when the repair was made and whether the repair sufficiently corrected the violation(s) of UPCS standards. Acceptable documentation includes: copies of work orders (listing the deficiency, action taken or repairs made to correct the deficiency, date of corrective action, and signature of the person responsible for the correction), invoices (from vendors, etc.), or other proof of correction. Photographs are not required but may be submitted if labeled and only in support of a work order or invoice. The Department will determine if submitted materials satisfactorily document correction of noncompliance.

(e) Selection of Units for Inspection.

(1) Vacant Units will not be inspected (alternate Units will be selected) if a Unit has been vacant for fewer than thirty (30) days.

(2) Units vacant for more than thirty (30) days are assumed to be ready for occupancy and may be inspected. No deficiencies will be cited for inspectable items that require utility service, if utilities are turned off and the inspectable item is present and appears to be in working order.

(f) The Department will consider a request for review of a UPCS score using a process similar to the process established by the U. S. Department of Housing and Urban Development Real Estate Assessment Center. The request must be submitted in writing within forty-five (45) calendar days of receiving the initial UPCS inspection report and score.

(g) Examples of items that can be adjusted include but are not limited to:

(1) Building Data Errors -- The inspection includes the wrong building, or a building that is not owned by the Development.

(2) Unit Count Errors -- The total number of units considered in scoring is incorrect as reported at the time of the inspection.

(3) Non-Existent Deficiency Errors -- The inspection cites a deficiency that did not exist at the time of the inspection.

(4) Local Conditions and Exceptions -- Circumstances include inconsistencies between local code requirements and the UPCS inspection protocol, such as conditions permitted by local variance or license (e.g., child guards allowed on sleeping room windows by local building codes) or preexisting physical features that do not conform to or are inconsistent with the Department's physical condition protocol.

(5) Ownership Issues -- Items that were captured and scored during the inspection that are not owned and/or not the responsibility of the Development. Examples include sidewalks, roads, fences, retaining walls, and mailboxes owned and maintained by adjoining properties or the city/county/state and resident-owned appliances that are not maintained by the Owner.

(6) Modernization Work In Progress -- Developments undergoing extensive modernization work in progress, underway at the time of the physical inspection, may qualify for an adjustment. All elements of the unit that are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to the Department's physical inspection protocol without adjustment. Any

request for a Database adjustment for modernization work in progress must include proof the work was contracted before any notice of inspection was issued by the Department.

(h) Examples of items that cannot be adjusted include but are not limited to:

- (1) Disagreements over the severity of a defect, such as deficiencies rated Level 3 that the Owner believes should be rated Level 1 or 2;
- (2) Deficiencies that were repaired or corrected during or after the inspection; or
- (3) Deficiencies recorded with no associated point loss (for example, inoperable smoke detectors) or deficiencies for survey purposes only (for example, fair housing accessibility).

### **§10.622.Special Rules Regarding Rents and Rent Limit Violations.**

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that a HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside. Example 622(1): A 100 unit development is required to lease 10 units to households at the 30 percent income and rent limits. The utility allowance is miscalculated resulting in overcharged rents. Fifteen households have an income under 30 percent. The owner must refund 10 of these households.

(c) Rent Violations of the maximum allowable limit due to application fees under the HTC program. Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to \$5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. Example 622(2): A Development's out of pocket cost for processing an application is \$17.00 per adult. The property may charge \$22.50 for the first adult and \$17.00 for each additional adult. Should an Owner desire to include a higher amount to cover staff time, prior approval is required and wage information and a time study must be supplied to the Department.

(2) Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged

applicants by using the total number of applications processed, not just approved applications. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Forms 8823 under the category “gross rent(s) exceeds tax credit limits.” The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected units back in compliance on January 1st of the year after they were overcharged the application fee.

(d) Rent or Utility Allowance Violations on Non-HTC Developments, HTC development after the Compliance Period, and foreclosed HTC properties for three years after foreclosure. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four (4) year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME Developments:

(1) 100 percent HOME assisted Developments. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to 30 percent of the household's adjusted income;

(2) HOME Developments with any Market Rate units. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the comparable Market rent; and

(3) HOME Developments layered with other Department affordable housing programs. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the rent allowable under the other program.

(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

(h) Employee Occupied Units (HTC and HTF Developments). IRS Revenue Rulings 92-61 and 2004-82 provide guidance on employee occupied units. Provided that all the criteria in the Rulings are met, if the Owner of the Development does not charge the employee for rent, the unit will be removed from the numerator and denominator of the applicable fraction to determine compliance. If the owner charges the employee any amount of rent, the Department will evaluate the eligibility of the household. If the household's income exceeds the maximum allowable limit or there is any other noncompliance, the event will be cited and reported to the IRS on Form 8823 as appropriate. Owners must ensure that additional rent and occupancy restrictions are maintained even if units are leased to employees.

**§10.623. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.**

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the Development for at least thirty (30) years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the criteria detailed in paragraphs (1) - (13) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department request;

(2) At least once every three (3) years the property will be physically inspected including the exterior of the Development, all building systems and 10 percent of Low-Income Units. No less than five but no more than thirty-five of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.607 of this chapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All HTC households must be income qualified upon initial occupancy of any Low-Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all HTC Low-Income Units. After the Compliance Period, utilities paid to the Owner can be accounted for in the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded;

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period;

(10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;

(11) The total number of required HTC Low-Income Units must be maintained Development wide;

(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis; and

(13) Owners must continue to collect and report data in accordance §10.612(b)(1) of this subchapter (relating to Tenant File Requirements).

(c) After the first fifteen (15) years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (6) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low-Income Unit. If a Development markets to students or leases more than 15 percent of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments and Extensions);

(2) The building's applicable fraction found in the Development's Cost Certification and/or the LURA. Low-Income occupancy requirements will be monitored Development wide, not building by building;

(3) All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

(4) The Department will not monitor the Development's application fee after the Compliance Period is over; and

(5) Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance §10.612 (b)(1) of this chapter (relating to Lease Requirements).

(6) The Department will not monitor whether rent is being charged for an employee occupied unit.

(d) While the requirements of the LURA may provide additional requirements, right and remedies to the Department or the tenants, the Department will monitor post year 15 in accordance with this section as amended.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year Fifteen (15) Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

**§10.624.Events of Noncompliance.**

Figure: 10 TAC §10.624 lists events for which a multifamily rental development may be found to be in noncompliance for compliance monitoring purposes. This list is not an exclusive list of events and issues for which an Owner may be subject to an administrative penalty, debarment or other enforcement action. The first column of the chart identifies the noncompliance event. The second column indicates to which program(s) the noncompliance event applies. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.

Figure: 10 TAC§10.624

| <b>Noncompliance Event</b>                             | <b>Program(s)</b> | <b>If HTC, on Form 8823?</b> |
|--|-------------------|------------------------------|
| Violations of the Uniform Physical Condition Standards | All Programs      | Yes                          |

| <b>Noncompliance Event</b>  | <b>Program(s)</b> | <b>If HTC, on Form 8823?</b>              |
|---|-------------------|---|
| Noncompliance related to Affirmative Marketing requirements described in §10.617 of this chapter  | All Programs      | No  |
| Development is not available to the general public because of leasing issues  | HTC               | Yes                                       |
| TDHCA has received notice of possible Fair Housing Act Violation from HUD or DOJ and reported general public use violation in accordance with IRS 8823 Audit Guide Chapter 13 | HTC               | Yes                                       |
| TDHCA has referred unresolved Fair Housing Design and Construction issue to the Texas Workforce Commission Civil Rights Division  | All programs      | No  |
| Property has gone through a foreclosure   | All programs      | Yes                                       |
| Property is never expected to comply due to failure to report or allow monitoring   | All programs      | yes                                       |
| Owner did not allow on-site monitoring or failed to notify residents resulting in inspection cancelation  | All programs      | Yes                                       |
| LURA not in effect  | All programs      | Yes                                       |
| Project failed to meet minimum set aside  | HTC and Bonds     | Yes                                       |
| No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA   | HTC               | Yes, if non-profit issue, No if HUB issue |
| Development failed to meet additional state required rent and occupancy restrictions  | All programs      | No  |
| Noncompliance with social service requirements  | HTC and Bond      | No  |
| Development failed to provide housing to the elderly as promised at application   | All programs      | No  |
| Failure to provide special needs housing as required by LURA  | All programs      | No  |
| Changes in Eligible Basis or Applicable percentage  | HTC               | Yes                                       |
| Failure to submit all or parts of the Annual Owner's Compliance Report  | All programs      | Yes for part A, No for other parts        |

| <b>Noncompliance Event</b>  | <b>Program(s)</b>  | <b>If HTC, on Form 8823?</b>  |
|---|--|---|
| Failure to submit quarterly reports as required by §10.607  | All programs   | No  |
| Noncompliance with utility allowance requirements described in §10.614 of this subchapter and/or Treasury Regulation §1.42-10                             | All programs   | Yes if rent exceeds limit, no if related to noncompliance with other requirements, such as posting, updating etc. |
| Noncompliance with lease requirements described in §10.613 of this subchapter   | All programs   | No  |
| Asset Management Division has reported that Development has failed to establish and maintain a reserve account in accordance with §10.405 of this chapter | All programs   | No  |
| Failure to provide a notary public as promised at application   | HTC  | No  |
| Violation of the Unit Vacancy Rule  | HTC  | Yes   |
| Casualty Loss   | All programs   | Yes   |
| Failure to provide pre-onsite documentation   | All programs   | No  |
| Failure to provide amenity as required by LURA  | HTC  | No  |
| Failure to pay asset management, compliance monitoring or other required fee  | HTC, TCAP, Bond, Exchange and HOME Developments committed funds after August 23, 2013              | No  |
| Change in ownership without department approval (other than removal of a general partner in accordance with §10.406 of this chapter)                      | All programs   | No  |
| Failure to provide fair housing disclosure notice   | All programs   | No  |
| Noncompliance with tenant selection requirements described in §10.610 of this subchapter  | All programs   | No, unless finding is because Owner refused to lease to Section 8 households                                      |
| Program Unit not leased to Low-Income household   | All programs   | Yes   |
| Program unit occupied by nonqualified full-time students  | HTC during the Compliance Period, Bond and HOME developments committed funds after August 23, 2013 | Yes   |
| Low-Income units used on a transient basis  | HTC and Bond   | Yes   |
| Violation of the Available Unit Rule  | All programs, but only during the Compliance Period for HTC, TCAP and Exchange                     | Yes   |

| <b>Noncompliance Event</b>   | <b>Program(s)</b>                               | <b>If HTC, on Form 8823?</b> |
|--|---|------------------------------|
| Gross rent exceeds the highest rent allowed under the LURA or other deed restriction                       | All programs                                    | Yes                          |
| Failure to provide Tenant Income Certification and documentation   | All programs                                    | Yes                          |
| Unit not available for rent  | All programs                                    | Yes                          |
| Failure to collect data required by §10.612(b)(1) and/or §10.612(b)(2)                                     | HTC, TCAP Exchange and Bond                     | No                           |
| Development evicted or terminated the tenancy of a low-income tenant for other than good cause             | HTC, HOME and NSP                               | Yes                          |
| Household income increased above 80 percent at recertification and Owner failed to properly determine rent | HOME  | NA                           |
| Violation of the Integrated Housing Rule   | All programs                                    | No                           |
| Failure to resolve final construction deficiencies within corrective action period                         | All programs                                    | No                           |
| Noncompliance with the accessibility requirements of §504 of the Rehabilitation Act of 1973                | HOME, NSP and HTC properties awarded after 2001 | No                           |

**§10.625.Liability.**

Compliance with the program requirements, including compliance with §42 of the Code, is the sole responsibility of the Development Owner. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner, including the Development Owner's noncompliance with §42 of the Code, the Fair Housing Act, §504 of the Rehabilitation Act of 1973, HOME program regulations, Bond program requirements, and any other laws, regulations, requirements, or other programs monitored by the Department.

**§10.626. Temporary Suspensions of Sections of this Subchapter.**

(a) Subject to the limitations stated in this section, temporary suspensions of sections of this subchapter may be granted by the Executive Director if there are extenuating circumstances which make it not possible or an undue administrative burden to comply with a requirement of this subchapter as long as substantial compliance is still in effect. For example, the Executive Director could suspend the requirement to report online or use Department approved forms, or alter the sample size for calculating a utility allowance using the actual use method.

(b) Under no circumstances can the Executive Director, the Compliance Committee, the Administrative Penalty Committee or the Board suspend for any period of time compliance with the HOME Final Rule or regulations issued by HUD or any other federal agency when required by federal law.

(c) Under no circumstances can the Executive Director, the Compliance Committee, the Administrative Penalty Committee or the Board suspend for any period of time Treasury Regulations, IRS publications controlling the submission of Form 8823, or any sections of 26 U.S.C. §42.