Compliance and Asset Oversight Division

§60.101. Purpose and Overview.

(a) This chapter ~~rule~~satisfies the requirement of §42(m)(1)(B)(iii) Internal Revenue Code (Code) to provide a procedure that will be followed for monitoring for noncompliance with the provisions of the Code and to notify the Internal Revenue Service of such noncompliance. The Department monitors rental Developments receiving assistance under:

(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); ~~and~~
(5) the Community Development Block Grant Disaster Recovery Program (CDBG);
(6) the Tax Credit Assistance Program; and
(7) the Tax Credit Exchange program.

(b) All properties monitored by the Department are subject to the Department's enforcement rules, found in Subchapter C of this chapter.

(c) Compliance monitoring begins with the commencement of construction and continues to the end of the long term Affordability Period. The ~~Portfolio Management and~~Compliance and Asset Oversight Division (CAO)~~(PMC)~~ monitors to ensure Owners comply with the program rules and regulations, Chapter 2306, Texas Government Code, the Land Use Restriction Agreement (LURA) requirements and conditions, and representations imposed by the Application or award of funds by the Department. These rules do not address forms and other records that may be required of Development Owners by the Internal Revenue Service (IRS) or other governmental entities, whether for purposes of filing annual returns or supporting Development Owner tax positions during an IRS or other governmental audit.

§60.109. Utility Allowances.

(a) The Department will monitor to determine if HTC, BOND, CDBG, HOME, and HTF properties comply with published rent limits which include an allowance for tenant paid utilities. For HTC 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 and allocation method or "ratio utility billing system" (RUBS), this monthly amount will be considered a mandatory fee. For HTC 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 Non-HTC 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. An Owner may not change utility allowance methods without written approval from the Department. Any such request must include the Utility Allowance Questionnaire found on the Department's website.

(b) Rural Housing Service (RHS) Buildings or buildings with RHS assisted tenants. The applicable utility allowance for the Development will be determined under the method prescribed by the Rural Housing Service (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted tenants.

(c) HUD-Regulated Buildings layered with any Department program. If neither the building nor any tenant in the building receives RHS rental assistance payment, and the rents and the utility allowances of the building are reviewed by HUD on an annual basis (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.

(d) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the following methods:

(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. 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. 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. If an Owner chooses to implement a methodology as described in paragraphs (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.

(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/_content/_compare/compare.aspx 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 specifically include all "component deregulated charges" for providing the utility service.

(3) The HUD Utility Model Schedule. A utility estimate can be calculated by using the "HUD Utility Model Schedule" that can be found at http://www.huduser.org/datasets/lihtc/html (or successor URL). 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 CD, within the timeline described in subsection (f) of this section.

(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, or

(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."

(e) 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 109(1):* 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 5 of the three bedroom one bath Units and 16 of the three bedroom two bath Units. If there are less than 5 Units of any Unit Type, data for 100 percent of the Unit Type must be provided.

(2) the following information must be scanned onto a CD and submitted to the Department no later than the beginning of the ninety (90) day period in 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 109(2):* The utility provider releases the information regarding electric usage at Westover Townhomes on February 5, 2009. The data provided is from February 1, 2008 through January 31, 2009. The Owner must submit the information to the Department no later than March 31, 2009 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 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.

(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 following guidelines:

(A) If data is obtained for more than 20 percent or 5 of each 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 baths and 12 two bedroom two baths, 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.

(E) If the data submitted indicates zero (0) 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 ninety (90) days of receipt of all the information requested in paragraph (2) of this subsection.

(5) 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.

(f) Effective dates. If the Owner uses the methodologies as described in subsections (b), (c), or (d)(1) of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due ninety (90) days after the change. For methodologies as described in subsection (d)(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. With the exception of the methodology described in subsection (d)(5) of this section, if a response is not received by the Department within the ninety (90) day period, the Owner may temporarily use the submission as a safe harbor until the Department provides written authorization (the Owner cannot assume that the allowance is approved by the Department but can operate in good faith prior to notification). Failure to submit the proposed utility allowance to the Department and make it available to the residents will result in a finding of noncompliance.

(g) Requirements for Annual Review. Owners utilizing the methods described in subsection (d)(2) - (5) of this section must once a calendar year submit copies of the utility estimate to the Department and simultaneously make the estimate available to the residents by posting the estimate in a common area of the leasing office at the Development. Changes in utility allowances cannot be implemented until the estimate has been submitted to the Department and made available to the residents by posting in the leasing office and a ninety (90) day period has elapsed. The back up documentation required by the methodology the Owner has chosen must be submitted to the Department for approval no later than October 1st; however, the Department encourages Owners to submit documentation prior to the October 1st deadline in order to ensure that the Department has adequate time to review and respond to the Owner's estimate.

(h) Combining Methodologies. With the exception of HUD regulated buildings 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.

(i) Increases in Utility Allowances for Developments with HOME funds. Because the HOME final rule does not provide a grace period for implementing increased utility allowances, changes in utility allowances must be implemented on the published effective date.

(j) The owner shall maintain and make available for inspection by the tenant the data upon which the utility allowance schedule is calculated. 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 apartment owner and tenant.

§60.110. Lease Requirements (HTC and HOME Properties).

(a) For HTC properties, Revenue Ruling 2004-82 prohibits the eviction or termination of tenancy for other than good cause of low income households throughout the entire Affordability Period and for three 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 properties, the HOME Final Rule 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).

(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 properties must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of Housing Tax Credit developments are prohibited from locking out or threatening to lock out any development resident, or seizing or threatening to seize the personal property of a resident, except by judicial process or for the purposes of performing necessary repairs or construction work or in cases of emergency. These prohibitions must be included in the lease or lease addendum.

§60.111. Income at Recertification (Housing Tax Credit Properties).

(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 limits or 40 percent of the Units restricted to the 60 percent income and rent limits). The minimum set aside elected by the Development Owner sets the maximum income and rent limits at the property. The Housing Tax Credit program requires mixed income properties to comply with the Available Unit Rule. Regardless of this section if a household's income exceeds 140 percent of the income limit elected by the minimum set aside, owners must comply with the Available Unit Rule. Many HTC Development Owners agreed to lease Units to households with an annual income and rent lower than the maximum limits (for example at the 30 percent, 40 percent or 50 percent income and rent limits) established by the minimum set aside election of the Owner. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's Land Use Restriction Agreement. When monitoring, the Department will examine the actual rent and income levels of all tenants to determine if additional rent and income requirements in the LURA are being met. Household income at recertification for the additional occupancy restrictions will be monitored as follows:

(1) Households initially designated at the 30 percent income and rent limits. If upon recertification, the household's income exceeds the 30 percent limit, the Unit will continue to meet the 30 percent set aside requirement provided that the Owner does not charge rent in excess of the 30 percent rent limits.

The household will not be required to vacate the Unit for other than good cause. The Owner will not be found in noncompliance provided that when the household moves out, the next available Unit on the property is leased to a household with an income and rent less than the 30 percent limits. If the household is replaced, the rent for the previously qualified Unit may be increased to the limit established by the minimum set aside, subject to applicable HTC requirements, lease provisions and local tenant-landlord laws.

(2) Households initially designated at the 40 percent income and rent limits. If upon recertification, the household's income exceeds the 40 percent 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 limits. The household will not be required to vacate the Unit for other than good cause. The Owner will not be found in noncompliance, provided that when the household moves out, the next available Unit on the property is leased to a household with an income and rent less than the 40 percent limits. If the household is replaced, the rent for the previously qualified Unit may be increased to the limit established by the minimum set aside, subject to applicable HTC requirements, lease provisions and local tenant-landlord laws.

(3) Households initially designated at the 50 percent income and rent limits (for HTC properties with the 40/60 minimum set aside). If upon recertification, the household's income exceeds the 50 percent income limit, the Unit will continue to meet the 50 percent set aside provided that the Owner does not charge rent in excess of the 50 percent rent limits. The household will not be required to vacate the Unit for other than good cause. The Owner will not be found in noncompliance provided that when the household moves out, the next available Unit on the property is leased to a household with an income and rent less than the 50 percent limits. Once the household has been replaced, the rent for the previously qualified Unit may be increased to the limit established by the minimum set aside, subject to applicable HTC requirements, lease provisions and local tenant-landlord laws.

(b) This section does not apply to households designated at the maximum income and rent limits required by the Code. Nor does this section in any way require a Development to lease more Units under the additional occupancy restrictions than established in the LURA.

(c) For those properties that are not required to perform recertifications, households will maintain the designation they had at move in. Owners must ensure that lower rent restrictions are adhered to throughout the household's occupancy.

(d) Preservation, HTF, ~~HOME~~ and BOND Developments, with any market units in one or more buildings (as evidenced in their LURA) must continue to perform annual recertifications of all households residing in program units. Owners of 100 percent low income Developments are not required to perform annual income recertifications. HTC Owners must perform annual income recertifications if the project has any market rate units. For HTC Developments, the election made on Part II of the 8609 will determine if a building is part of a project. HTC Development Owners must submit Forms 8609 with Part II completed. The Department may also require HTC Owners to complete Form 8821 to permit the Department to confirm the elections with the IRS.

(e) For HTC~~, Preservation, HTF, and/or BOND~~ Developments in which the LURA requires 100 percent of the units to be leased to income eligible families, the following recertification requirements apply:

(1) To comply with HUD reporting requirements, once every calendar year, the Development must collect a self-certification form from each household that reports the number of household members, the age of each household member, disability status, monthly rental assistance amounts received (if any), and race and ethnicity. In addition, the self certification will collect information about student status to establish ongoing compliance under the HTC and BOND programs. The Development must use the Department's Annual Eligibility Certification to collect this information and must maintain the certification in all household files.

(2) On 100 percent low income Housing Tax Credit developments, households may transfer to any unit within the same project (as determined on Part II of the 8609 for HTC Developments). On mixed income Housing Tax Credit Developments, households may transfer to any unit within the Development if as of their most recent (re) certification, their income was less than 140 percent of the maximum allowable limit. If the owner of a Housing Tax Credit development elected to treat each building as a separate project, households must be certified and low income to transfer to another building.

(3) Owners must review the Annual Eligibility Certification for the following items which would require further action:

(A) Changes in household composition. If members are added to an existing household, Owners must determine eligibility and complete a certification. The new household must be screened for income, assets, and student status and the existing Income Certification form must be updated. Owners must obtain first hand or third party verification of income and assets.

(i) If the Development becomes aware of the additions to households during the year, this action must be taken at the time the new household member moves in; Owners may not wait until the Annual Eligibility Certification is completed to take action. The Unit Status Report must be updated to reflect current circumstances as the property becomes aware of changes in household size.

(ii) If all original tenants have vacated the unit, the remaining tenants must be certified as a new income-qualified household unless the tenants were income qualified at the time of move in. HTC Units in noncompliance will be reported to the IRS on Form(s) 8823 and/or scored in the Department's Compliance Status System as applicable.

(B) Student status. Developments must use a lease addendum (or incorporate into their lease) a requirement for households to report changes in student status. If at any time the household reports a change in student status or discloses a change on the Annual Eligibility Certification form, the Owner must determine if the household is still eligible under the program. If the household meets one of the exceptions, documentation supporting eligibility must be gathered and retained in the lease file. Units in noncompliance will be reported to the IRS on Form(s) 8823 and/or scored in the Department's Compliance Status System as applicable.

(4) Failure to complete the Annual Eligibility Certification and maintain the form in household files will result in an issue of noncompliance that will be scored as shown in Figure: 10 TAC §60.121(l) under "Failure to maintain or provide Annual Eligibility Certification". No Form(s) 8823 will be filed with the IRS for the noncompliance.

(5) If a 100 percent low income Development continues to complete full recertifications, the Annual Eligibility Certification form must still be completed and the Unit Status Report must be updated at the completion of the recertification. The Department will not review the recertification paperwork during monitoring visits unless noncompliance is identified with the initial certification.

(f) For HOME Investment Partnership Developments, in accordance with 24 CFR §92.252 and §92.203 of the HOME Final Rule, the following recertification requirements apply:

(1) Once every calendar year, the Development must collect a self-certification form from each household that reports the household's income, number and ages of household members, student status, disability status, monthly rental assistance amounts received (if any), and race and ethnicity. The Development must use the Department's Income Certification form to collect this information and must maintain the certification in all household files. Failure to complete the Income Certification and maintain the form in household files will result in an issue of noncompliance that will be scored as shown in Figure: 10 TAC §60.121(l) under "Failure to maintain or provide Annual Eligibility Certification".

(2) HOME Developments must also complete full recertifications of each HOME Unit in every sixth year of the Development's Affordability Period. *Example 111.1:* A HOME property with an

affordability period beginning in 2010 must perform full recertifications of all HOME households in 2015. All households must be re-certified, even households that moved in during 2014. Full recertifications at any other time are not required unless, the household self reports an annual income in excess of the 80 percent Area Median Income or as stated in 24 CFR §92.252, there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income or the property has otherwise been directed to institute full recertifications by the Department.

§60.112. Requirements Pertaining to Households with Rental Assistance.

(a) The Department will monitor to ensure Development Owners comply with §2306.269 and §2306.6728, Texas Government Code, regarding residents receiving rental assistance under §8, United States Housing Act of 1937 (42 U.S.C. §1437f).

(b) The policies, standards, and sanctions established by this section apply only to:

(1) multifamily housing Developments that receive the following assistance from the Department on or after January 1, 2002 (§2306.185):

(A) a loan or grant in an amount greater than 33 percent of the market value of the Development on the date the recipient took legal possession of the Development; or

(B) a loan guarantee for a loan in an amount greater than 33 percent of the market value of the Development on the date the recipient took legal title to the Development;

(2) multifamily rental housing Developments that applied for and were awarded housing tax credits after 1992;

(3) housing Developments that benefit from the incentive program under §2306.805 of the Texas Government Code;

(4) housing Developments that receive funding from the HOME program (24 CFR §92.252(d)).

(c) Owners of multifamily rental housing Developments described in subsection (a) of this section are prohibited from:

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

(2) using 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. A household participating in the voucher program or receiving any other type of rental assistance may not be required to have a minimum income exceeding $2,500 per year.

(d) To demonstrate compliance with this section, Owners shall:

(1) State in their leasing criteria 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) Approve and distribute an Affirmative Marketing Plan that will be used 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, Hispanic or Latino groups, persons with disabilities, families with children, or persons with different religious affiliations. The Affirmative

Marketing plan must be provided to the property management and onsite staff. Owners are encouraged to use HUD Form 935.2A, or successors as applicable. The Affirmative Marketing Plan must identify the following:

(A) Which group(s) the Owner believes are least likely to apply for housing at the Development without special outreach. All Developments must select persons with disabilities as one of the groups identified as least likely to apply. When identifying racial/ethnic minority groups the property will market to, factors such as the characteristics of the housing's market area should be considered. *Example 112.1:* An Owner obtains census data showing that 6.5 percent of the city's total population identify as Asian Americans. However, the Owner's demographic data for the Development shows that zero (0) 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.

(B) Procedures that will be used by the Owner to inform and solicit applications from persons who are least likely to apply. Specific media and community contacts that reach those groups designated as least likely to apply must be identified (community outreach contacts may include neighborhood, minority, 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 112.2:* 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 developmentally disabled adults. Additionally, the Owner will advertise upcoming vacancies in a monthly newsletter circulated by an organization serving the hearing impaired.

(C) How the Owner will assess the success of Affirmative Marketing efforts. Affirmative Marketing Plans should be reviewed on an annual basis to determine if changes should be made and plans must be updated every five years to fully capture demographic changes in the housing's market area.

(D) Records of marketing efforts must be maintained for review by the Department during onsite monitoring visits. *Example 112.3:* 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 will result in a finding of noncompliance.

§60.116. 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 heath, safety, and building codes. The Department may contract with a third party to complete UPCS inspections.

(b) Housing Tax Credit 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 will evaluate UPCS reports in the following manner:

(1) A finding of Major Violations will be cited if:

(A) Life threatening health, safety, or fire safety hazards are reported on the Notification of Exigent and Fire Safety Hazards Observed form and are not corrected within twenty-four (24) hours of the inspection with notification submitted to the Department within seventy-two (72) hours of the inspection. Failure to notify the Department within seventy-two (72) hours of the correction of any

exigent health and safety or fire safety hazards listed on the Notification will result in a finding of Major Violations of the Uniform Physical Condition Standards for the Development; or

(B) ~~20 percent of the violations noted are level three deficiencies other than level three deficiencies reported on the Notification of Exigent and Fire Safety Hazards Observed form and corrected in the seventy-two (72) hour limit; or~~

~~(C)~~An~~an~~ overall UPCS score of less than 70~~60~~ percent (69~~59~~ percent or below) is reported.

(2) A finding of Pattern of Minor Violations will be assessed if an overall score between 70 ~~60~~ percent and 89 ~~79~~ percent is reported.~~:~~

~~(A) 20 percent of the violations noted are level two deficiencies; or~~

~~(B) An overall score between 70-60 percent and 89-79 percent is reported.~~

(3) Findings of both Major and Minor Violations will be assessed if deficiencies reported meet the criteria for both.

(d) The Department is required to report to the Internal Revenue Service on Form 8823 any HTC Development that fails to comply with any requirements of the UPCS or local codes at any time (including smoke detectors and blocked egresses). Accordingly, the Department will submit Form(s) 8823 for any UPCS violation. However, if the violation(s) do not meet the conditions described in subsection (c)(1) or (2) of this section, the issue will be noted in the Department's compliance status system as Administrative Reporting and no points will be assigned in the Department's compliance status evaluation of the Development. Non HTC properties that do not meet thresholds for Major and Pattern of Minor Violations as described in subsection (c)(1) or (2) in this section and correct all life threatening health, safety, and fire safety hazards noted at the time of inspection as directed in subsection (c)(1)(A) of this section will not receive findings for UPCS inspections. Items noted that do not exceed thresholds for Major and Pattern of Minor Violations must be corrected by submission of an Owner's Certification of repair within the ninety (90) day corrective action period.

(e) 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 (examples of such documentation includes work orders, photographs, and/or invoices to third party repair specialists).

(f) The Department will provide a ninety (90) day corrective action period to respond to a notice of noncompliance for violations of the Uniform Physical Condition Standards. The Department will grant up to an additional ninety (90) day extension if there is good cause and the Owner clearly requests an extension during the corrective action period.

(g) 24 CFR §92.251 of the HOME Final Rule requires rental property assisted with HOME funds to be maintained in compliance with all local codes and Housing Quality Standards (24 CFR §982.401). To meet this requirement, all HOME rental Development Owners must annually complete an HQS inspection of all HOME assisted Units. The Department will review HQS inspection sheets for all units for compliance with this requirement during onsite monitoring visits.

(h) 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 will be inspected. No deficiencies will be cited for inspectable items if utilities are turned off and the inspectable item is present and appears to be in working order.

(i) Property damage that is the direct result of utility damage or malfunction or repair activity relating to such damage that is beyond the property owner’s control, including, but not limited to, eruption of gas, sewer or storm sewer mains and water mains, and electricial fires, will not be taken into

consideration in determining a compliance score, provided that the property owner did not negligently or intentionally serve as a proximate cause for the damage.

§60.117. Notice to Owners.

The Department will provide written notice to the Development Owner if the Department does not receive the AOCR or 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, or program rules and regulations, including §42 of the IRC. Owners may request that results of monitoring reviews be emailed if all email addresses in CMTS are up to date. If Owners request such notices be sent by email, a paper copy will not be mailed by the Department. The notice will specify a correction period of ninety (90) days from the date of notice to the Development Owner, during which the Development Owner may respond to the Department's findings, bring the Development into compliance, or supply any missing documentation or certifications. The Department may extend the correction period for up to six months from the date of the notice to the Development Owner if there is good cause for granting an extension and the owner requests an extension during the original 90 day corrective action period . If any communication to the Development 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 Development Owner. The Development Owner is responsible for providing the Department with current contact information, including address(es) and phone number(s). The Development Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Current Contact Information to the Department).

§60.118. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit (HTC). Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, ~~such as utilities paid to the owner,~~ 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 Department will report the violation as corrected on the date that the rent plus the utility allowance, plus fees, is less than the applicable limit. The refunding of overcharged rent does not avoid the disallowance of the credit by the Internal Revenue Service.

(b) Rent or Utility Allowance Violations of additional rent restrictions (HTC). If the Owner agreed to lease Units at rents less than the maximum allowed under the Code (additional occupancy restrictions), the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged. This applies during the entire Affordability Period. The noncompliance event will be considered corrected on the date which is the later of the date the overcharged rent was refunded/credited to the resident or the date that the rent plus the utility allowance is equal to or less than the applicable limit. *Example 118(1):* For Internal Revenue Code §42 purposes, the maximum allowable limit is 60 percent. However, the Owner agreed to lease some Units to households at the 30 percent income and rent limits. It was discovered that the 30 percent households were overcharged rent. The Owner will be required to reduce the current amount of rent charged and refund the excess rents to the households.

(c) Rent Violations of the maximum allowable limit due to application fees (HTC). 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. The amount of time Development staff spends on checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add $5.50 per unit to their other out of pocket costs for processing an application without providing documentation. Should an Owner desire to include a higher amount to cover staff time, wage information and a time study must be supplied to the Department upon request. 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 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 Form(s) 8823 under the category Gross rent(s) exceeds tax credit limits. The noncompliance will be corrected on the later of January 1st of the next year or as of the date the application fee is reduced and evidence of a reduced application fee is supplied to the Department. Owners are not required to refund the overcharged fee amount. If the Development refunds the overcharged fee in full or in part, the units will remain out of compliance until January 1st of the next year or until the application fee is reduced.

(d) Rent or Utility Allowance Violations on Non Housing Tax Credit properties. If it is determined that the property 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 rent collected must be deposited into a trust account for the tenant. The account must remain open for a four (4) year period, until all funds are claimed, or for four (4) years. 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 dispersed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME properties. 24 CFR §92.252 of the HOME Final Rule requires Owners to charge households with an income in excess of 80 percent at recertification, a rent equal to the lesser of 30 percent of the household's adjusted income or the market rent for comparable unassisted Units in the neighborhood. If at recertification the household self certifies an income in excess of the 80 percent limit, documentation of all income, assets and allowable deductions must be obtained by the owner. The Department will find a HOME property in noncompliance with this section if the Owner fails to determine the over income household's adjusted income and maintain documentation of market rents for comparable unassisted Units in the neighborhood.

(g) Special conditions for CDBG properties. 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.

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

(a) Housing Tax Credit properties allocated credit in 1990 and after are required under the Code (§42(h)(6)) to record a LURA restricting the property 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 Housing Tax Credit Developments using the rules detailed in paragraphs (1) - (12) of this subsection.

(1) On site monitoring visits will continue to be conducted approximately every three years, unless the Department determines that a more frequent schedule is necessary;

(2) In general, the Department will review 10 percent of the low income files. No less than 5 files and no more than 20 files will be reviewed;
(3) The exterior of the property, all building systems and 10 ~~20~~ percent but no more than 35 of the Development's Low Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;
(4) Each Development shall submit an annual report in the format prescribed by the Department;
(5) Reports to the Department must be submitted electronically as required in §60.105 of this chapter;
(6) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;
(7) All 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;
(8) Rents will remain restricted for all 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;
(9) All additional income and rent restrictions defined in the LURA remain in effect;
(10) Other requirements defined in the LURA, such as the provision of social services or serving special needs households, will remain in effect;
(11) The Owner shall not terminate the lease or evict low income residents for other than good cause; and
(12) The total number of required Low Income Units must be maintained Development wide.
(c) After the first fifteen (15) years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) – (4) ~~(3)~~ 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;
(2) The building 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; and
(3) Household transfers between buildings restricted by §42(g)(1). All households, regardless of HTC income level designation, will be allowed to transfer between buildings within the Development; and~~.~~
(4) The Department will not monitor the Development's application fee after the Compliance Period is over.
(d) Unless specifically noted in this section, all requirements of this chapter and §42 of the Internal Revenue Code remain in effect for the Extended Use Period. These Post Year 15 Monitoring Rules apply only to the Housing Tax Credit 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.

§60.121. Material Noncompliance Methodology.
(a) The Department maintains a compliance history of each monitored Development in the Department's Compliance Status System. Developments with more than one program administered by the Department are scored by program. The Development will be considered in Material Noncompliance if the score for any single program exceeds the Material Noncompliance ~~noncompliance~~ threshold ~~limit~~ for that program.
(b) A Development will not be assigned the scores noted in this section until after the Owner has been provided a written notice of the noncompliance and provided a corrective action deadline to show that

either the Development was never in noncompliance or that the noncompliance event has been corrected.
(c) This section identifies all possible noncompliance events for all programs monitored by the Physical Inspection and Compliance Monitoring Sections of the Compliance and Asset Oversight Division ~~Department~~. However, not all issues listed in this section pertain to all Developments. In addition, only certain noncompliance events are reportable on Form 8823. Those events that are reportable under the HTC program on Form 8823 are so indicated in subsections (k) and (j) of this section.
(d) For HTC Developments, all Forms 8823 issued by the Department will be entered into the Department's Compliance Status System. However, Forms 8823 issued prior to January 1, 1998 will not be considered in determining Material Noncompliance.
(e) For all programs, a Development will be in Material Noncompliance if the noncompliance event is stated in this section to be Material Noncompliance. The Department may take into consideration the representations of the Applicant regarding monitoring notices and owner responses ~~noncompliance events~~; however, unless an owner can prove otherwise, the compliance records of the Department shall be presumed to be correct.
(f) All Developments, regardless of status, that are or have been administered, funded, or monitored by the Department are scored even if the Development no longer actively participates in the program, with the exception of properties in the FDIC's Affordable Housing Disposition Program.
(g) A Development's score will be reduced by the number of points needed to be one point under the Material Noncompliance threshold provided that~~:~~ all issues of noncompliance are corrected and the owner has a pattern of timely responding within the correction period to Department requests for corrective action. However, prior to a reduction in score, HOME or HTF funded properties will have their LURA extended to ensure the full affordability period will be achieved. If the Development owner does not agree to this, then the score will not be reduced. Forms 8823 will be sent to the IRS for HTC properties, as appropriate, regardless of score.~~:~~
~~(1) The Development has no previously reported noncompliance events that are uncorrected,~~
~~(2) All newly identified noncompliance events are corrected during the corrective action period,~~
~~(3) All corrective action documentation for the newly identified noncompliance is provided to the Department during the corrective action period, and~~
~~(4) The Development was not already in Material Noncompliance at the time of its most recent monitoring review.~~
(h) Noncompliance events are categorized as either "Development events" or "Unit/building events." Development events of noncompliance affect some or all the buildings in the Development; however, the Development will receive only one score for the noncompliance event rather than a score for each building. Other noncompliance events are identified individually by Unit and will receive the appropriate score for each Unit cited with an event. The Unit scores and the Development scores accumulate towards the total score of the Development. Violations under the HTC program are identified by Unit; however, the building is scored rather than the Unit and the building will receive the noncompliance score if one or more of the Units are in noncompliance.
(i) Uncorrected noncompliance events, if applicable to the Development, will carry the maximum number of points until the noncompliance event has been reported corrected by the Department. Once reported corrected by the Department, the score will be reduced to the "corrected value." Corrected noncompliance will no longer be included in the Development score three years after the date the noncompliance was reported corrected by the Department.
(j) Each noncompliance event is assigned a point value. The possible events of noncompliance and associated "corrected" and "uncorrected" points are listed in subsection (k) of this section.

(k) Figure: 10 TAC §60.121(k) lists events of noncompliance that affect the entire Development rather than an individual Unit. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. Material Noncompliance for a HTC Development is 30 points. Material Noncompliance for a non HTC property with 1 to 50 low income units is 30 points. Material Noncompliance for a non HTC property with 51 to 200 Low Income Units is 50 points. Material Noncompliance for non HTC properties with 201 or more Low Income Units is 80 points. The third column lists the number of points assigned to this event when the issue is corrected until three years after correction. The fourth column indicates what programs the noncompliance event applies to. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.

Figure: 10 TAC §60.121(k)

(l) Figure: 10 TAC §60.121(l) lists 10 events of noncompliance associated with individual Units. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. Material Noncompliance for a HTC property is 30 points. Material Noncompliance for a non HTC property with 1 to 50 low income units is 30 points. Material Noncompliance for a non HTC property with 51 to 200 Low Income Units is 50 points. Material Noncompliance for non HTC properties with 201 or more Low Income Units is 80 points. The third column lists the number of points assigned this event when the issue is corrected until three years after the event is corrected. The fourth column indicates what programs the noncompliance event applies to. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.

Figure: 10 TAC §60.121(l)

§60.122. Previous Participation Reviews.

(a) Prior to providing any Department assistance, executing a Carryover Allocation Agreement, approving a transfer in ownership, or processing a request for a Qualified Contract, the ~~Portfolio Management and~~ Compliance and Asset Oversight Division will conduct a previous participation review to determine if the requesting entity controls a rental development that is in Material Noncompliance, owes the Department any fees, is 60 days delinquent on a loan payment, has a past due single audit or single audit certification form, or has any unresolved ~~outstanding~~ audit or monitoring findings identified by the Contract Monitoring Section of the Compliance and Asset Oversight Division. ~~issues or any uncorrected issues of noncompliance.~~ Previous participation reviews will also be conducted if more than 120 days elapse between Board approval of an Application and a loan closing. Assistance includes but is not limited to allocating any Department funds or tax credits, with the exception of Community Services Block Grant funds, permitting the transfer of Ownership of a property, engaging in loan or contract modifications that result in increased funding, and providing incentive awards.

(b) HTC Developments with any uncorrected issues of noncompliance or with pending notices of noncompliance, will not be issued Form 8609s, Low Income Housing Credit Allocation Certification, until the noncompliance is corrected.

(c) If during the previous participation review an uncorrected issue of noncompliance required by the HOME final Rule is identified on a HOME Development monitored by the Department, the entity requesting assistance will be notified of the issue and provided ~~a~~ five (5) business days ~~period~~ to

submit all necessary corrective action to cure the violation(s). The notification will be in writing and may be delivered by email. If the requesting entity does not cure the violation(s)~~issues~~, the Application for assistance will be terminated. If the Application is terminated, the Board ~~applicant~~ has the ability to reinstate the Application for consideration ~~appeal~~ as provided in §60.126 ~~1.7~~ of this chapter~~title~~.
(d) If during the previous participation review, the Department determines that the requesting entity owes the Department any fees, is 60 days delinquent on a loan payment, has a past due audit or audit certification form, has unresolved audit or monitoring findings identified by the Contract Monitoring section of the Compliance and Asset Oversight division, or has control of an existing Development monitored by the Department that is in Material Noncompliance, the entity requesting assistance will be provided five (5) business days to submit all necessary corrective action, fees, bring their loan current, single audit or audit certification to cure the violation(s). If the requesting entity does not cure the issue(s), the Application for assistance will be terminated. If the Application is terminated, the Board has the ability to reinstate the application for consideration as provided in §60.126 of this chapter.
(e) If during the previous participation review, the Department determines that the requesting entity is on the Department's or the Department of Housing Urban Development's debarred list, the Application for assistance will be terminated. An application properly terminated for this reason cannot be reinstated for consideration.
(f) ~~In accordance with §2306.057 of the Texas Government Code, the Board shall fully document and disclose any instances in which the Board approves a project Application despite any noncompliance associated with the project, applicant, or affiliate. If an Application is terminated because of the Previous Participation Review, the applicant may appeal the decision in accordance with §1.7 or §1.8 of this title.~~
~~(g)~~ Treatment of previously owned Developments during a Previous Participation review:
(1) The Department will not take into consideration the score of a Development transferred by the applicant over three (3) years ago.
(2) The Department will not take into consideration the score of a Development whose Affordability Period ended over three years ago.
(3) The Department will not take into consideration scores attributed to Developments for noncompliance with FDIC's Affordable Housing Disposition Program.
(4) If the Development was transferred less than three years ago, the Department will determine the score for the noncompliance events with a date of noncompliance identified during the applicant's period of Ownership. If the points associated with the noncompliance events identified during the applicant's period of Ownership exceed the threshold for Material Noncompliance, the Application will not be recommended.
(g)~~(h)~~ Date for determining ~~of~~ Material Noncompliance. Previous participation reviews will be conducted prior to the Board meeting when funds will be awarded. The score is in effect at the completion of the previous participation review process (which includes the five (5) day period referenced in subparagraph (d) of this section) will be used to determine if the Application for assistance will be terminated. Previous participation reviews are not required to be performed if less than 120 days have elapsed since the last review, provided there is no change in the organizational structure. ~~For HTC Applications, the score in effect on May 1st of the year the HTC Application is submitted will be used. For Carryover Allocations, the score in effect on October 1st of the year the award is being made will be used. For all other requests for assistance, the score in effect the day of Previous Participation Review is being conducted will be used.~~
(h) Treatment of units of government during a previous participation review. If a city, county or local government applies for assistance from the Department a previous participation review will be conducted. If the city, county or unit of government controls a rental property that is in Material

Noncompliance, owes the department any fees, is 60 days delinquent on a loan payment, has a past due audit or audit certification form or has unresolved audit or monitoring findings from a department or other review, the process described in subparagraph (d) will be followed. However, the previous participation of individual elected officials will not be considered provided that they are not the contract executor for the Application being considered for funding.
(i) Treatment of nonprofits during a previous participation review. If a nonprofit applies or is associated with an Application for assistance from the Department, a previous participation review will be conducted. If the nonprofit controls a rental property that is in Material Noncompliance, owes the Department any fees, is 60 days delinquent on a loan payment, has a past due audit or audit certification form or has unresolved audit or monitoring findings identified by the Contract Monitoring section of the Compliance and Asset Oversight division, the process described in subsection (d) of this section will be followed. If it is determined that the Executive Director, Chair of the Audit Committee, Board Chair or any member of the Executive Committee of the nonprofit controls a rental property that is in Material Noncompliance, owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due audit or audit certification form or has unresolved audit or monitoring findings identified by the Contract Monitoring Section of the Compliance and Asset Oversight division, the process described in subsection (d) of this section will be followed. If within the five (5) day period, the party with noncompliance resigns from the Board or organization requesting assistance, the noncompliance will not be taken into consideration. If it is determined that any member of the Board of the Nonprofit is on the Department's or the Department of Housing and Urban Development's debarred list, the Application for assistance will be terminated.

§60.123. Alternative Dispute Resolution (ADR).
(a) It is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) to assist in resolving disputes under the Department's jurisdiction. If at any time an applicant or other person would like to engage the Department in an ADR process, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.
(b) In all phases of monitoring, (construction and throughout the entire Affordability Period) if a potential issue of noncompliance has been identified, Owners will be provided a written notice of noncompliance. In general, the~~The~~ Department will provide up to a ninety (90) day corrective action period which can and will be extended for an additional ninety (90) days if there is good cause and the Owner requests an extension during the corrective action period.
(c) Owners must respond to the Department's notice of noncompliance. If an Owner does not respond, this ADR process which is explained in this section cannot be initiated.
(d) If an Owner does not agree with the Department's assessment of compliance, they should clearly explain their position and provide as much supporting documentation as possible. If the position is reasonable and well supported, the issue of noncompliance will be cleared with no further action taken, i.e. for HTC properties, Form(s) 8823 will not be filed with the Internal Revenue Service and the issue will not be scored in the Department's compliance status system.
(e) If an Owner's response indicates disagreement with the Department's assessment of noncompliance, but does not appear to be a valid concern to the Department, staff will notify the Owner in writing of their right to engage in ADR. The Owner must respond in five (5) days and request ADR. In addition, the owner must request an extension of the corrective action deadline, if one is still available. If the owner does not respond to the staff's invitation to engage in ADR, the Department's assessment of the violation is final.

(f) The Department must meet the Treasury Regulation requirement found in §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. In this circumstance, the Form 8823 will be filed. However, it will be sent to the IRS with an explanation that the owner disagrees with the Department's assessment and is pursuing ADR. All Owner supplied documentation supporting their position will be supplied to the IRS. Although the violation will be reported to the IRS within the required timeframes, it will not be scored in the Department's compliance status system pending outcome of ADR.
(g) ADR is not an appropriate format for matters regarding settled interpretations of laws, regulations and rules. ADR can only be used when parties could reach consensus.

§60.126. Temporary Suspension of Previous Participation Reviews~~Waiver~~.
~~The Board, in its discretion and within the limits of law may waive any one or more of these Rules if the Board finds that a waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.~~
(a) An entity whose request for assistance is terminated under §60.122 of this chapter may request reinstatement of the Application for consideration. The request must be in writing and must be submitted to the Department within three (3) days of the date of the Department's letlter notifying the requesting entity of the termination/denial. A timely filed request for reinstatement shall be placed on the agenda for the next Board meeting for which it can be properly posted.
(b) If an Application for assistance was terminated under §60.122 of this chapter, the Board may reinstatement of the Application only in the event that it determines, after consideration of the relevant, material facts and circumstances that:
(1) it is in the best interests of the Department and the State to proceed with the award;
(2) the award will not present undue increased program or financial risk to the Department or State;
(3) the applicant is not acting in bad faith; and
(4) the applicant has taken reasonable measures within its power to remedy the cause for the termination.
(c) Reinstatement of a terminated Application merely makes the Application eligible to be considered and does not, in and of itself, constitute approval.

§60.127. Temporary Suspension of other Sections of this Subchapter
(a) Temporary Suspensions of other sections of this rule may be granted if the Board finds one or more of the following factors:
(1) A natural disaster or other act of God has made the application of this subchapter infeasible for a period of time and the Governor of Texas or President of the Untied States has previously made a disaster declaration in the area during the relevant time period;
(2) Due to documented shortages in items necessary to complete the requirements of the subchapter, the owner/applicant was unable to meet the rule requirements, this would include, but not be limited to, a shortage of labor, building materials, or public utilities available;
(3) A federal rule has changed that significantly changed the ability of the owner/applicant to deliver the services required at the time the property was placed in service or began operation—note that the Board cannot waive the rule itself and the owner must comply, but the Board may suspend the compliance score related to the violation in this situation; and/or

(4) When a property has been subjected in part to a governmental action such as partial condemnation through no fault of the owner/applicant, eminent domain, or zoning changes that do not allow corrections requested.

(b) Under no circumstances can the Board suspend for any period of time compliance with the HOME Final Rule or regulations issued by HUD when required by federal law.

(c) Under no circumstances can 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

(d) Examples of items the Board could temporarily suspend include: the requirement to report online, the requirement to use Department approved forms, sampling size requirements for agency calculated utility allowance, or the requirement to repay overcharged rent on a HTF property.

Figure: 10 TAC §60.121(k)

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Major property condition violations	Material Noncompliance	10	All programs	Yes
Pattern of minor property condition violations	10	5	All programs	Yes
Administrative reporting of property condition violations	0	0	HTC	Yes
Owner refused to lease to a holder of rental assistance certificate/voucher because of the status of the prospective tenant as such a holder	Material Noncompliance	10	See §60.112	Yes
Owner failed to approve and distribute an Affirmative Marketing Plan as required under §60.112 of this chapter	10	3	See §60.112	No
Development failed to comply with requirements limiting minimum income standards for Section ~~§~~ 8 residents.	10	3	See §60.112	No
Development is not available to general public	10	0	HTC	Yes
HUD or DOJ notification of possible Fair Housing Act violation	0	0	HTC	Yes
Determination of a violation under the Fair Housing Act	Material Noncompliance	10	All programs	Yes
Development is out of compliance and never expected to comply/ Foreclosure	Material Noncompliance	NA/No correction possible	All programs	Yes
Owner did not allow on-site monitoring review	Material Noncompliance	5	All programs	Yes
LURA not in effect	Material Noncompliance	5	All programs	Yes
Development failed to meet minimum set aside	20	10	HTC Bonds	Yes
No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement	10	3	HTC	Yes

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Development failed to meet additional State required rent and occupancy restrictions	10	3	All programs	No
The Development failed to provide housing to the elderly as promised at Application	10	3	All programs	No
Failure to provide special needs housing	10	3	All programs	No
Changes in Eligible Basis or Applicable Percentage	3	NA, No correction possible	HTC	Yes
Failure to submit part or all of the AOCR or failure to submit any other annual, monthly, or quarterly report required by the Department	10	3	All programs	Yes
Utility Allowance not calculated properly	20	10	All programs	Yes
Owner failed to execute required lease provisions, including language required by §60.110 or exclude prohibited lease language	10	3	HTC HOME	No
Failure to provide annual Housing Quality Standards inspection	10	3	HOME	NA
Development has failed to establish and maintain a reserve account in accordance with §1.37 of this title	Material Noncompliance	10	<u>All programs</u> ~~HTC~~	No
Development substantially changed the scope of services as presented at initial Application without prior Department approval	10	3	HTC	No
Change in Ownership or General Partner without proper notification to and approval of Department	10	3	All programs	No
Failure to provide a notary public as promised at Application	10	3	HTC	No
Violations of the Unit Vacancy Rule	3	1	HTC	Yes
Casualty loss	0	0	All programs	Yes

Figure: 10 TAC §60.121(l)

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Unit not leased to Low Income Household	5	1	All programs	Yes
Low Income Units occupied by nonqualified full-time students	3	1	HTC during the compliance period and Bond	Yes
Low Income Units used on transient basis	3	1	HTC Bond	Yes
Household income increased above the re-certification limit and an available Unit was rented to a market tenant	3	1	HTC During the compliance period Bonds HOME HTF	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	5	1	All programs	Yes
Failure to maintain or provide tenant income certification and documentation	3	1	All programs	Yes
Unit not available for rent	3	1	All programs	Yes
Failure to maintain or provide Annual Eligibility Certification	3	1	All programs	No
Development evicted or terminated the tenancy of a low income tenant for other than good cause	10	3	HTC HOME	Yes
Household income increased above 80% at recertification and Owner failed to properly determine rent	3	1	HOME	NA