

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of Proposed Amendments to 10 TAC Chapter 10 Subchapter F §10.602 Notice to Owners and Corrective Action Periods; §10.606 Construction Inspections; §10.621 Property Conditions Standards; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; and Figure §10.625 Compliance Monitoring Rules

Disclaimer

Attached is a draft of the proposed amendments to 10 TAC Chapter 10, Compliance Monitoring Rule that was approved by the TDHCA Governing Board on October 26, 2023. The document attached reflects all changes proposed in tracked changes to facilitate review. This document, including its preamble, is scheduled to be published in the November 10, 2023 edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment. The version herein is informational only and should not be relied upon as the basis for public comment.

Summary of the Document and the Changes Proposed: Staff is recommending a revision to the rule to update required corrective action periods when federal deadlines may supersede other corrective action deadlines and to deleting references to the Uniform Physical Conditions Standards (UPCS), replacing it with the new Housing and Urban Development (HUD) physical inspection standard, the National Standards for Physical Inspection of Real Estate (NSPIRE).

In compliance with Texas Government Code, §2001.023(c), a summary of the proposed document is provided. Also in compliance with Texas Government Code, §2001.023(c), this cover sheet and summary are provided in both English and Spanish.

Public Comment

**Public Comment Period: Starts: 8:00 a.m. Austin local time on November 10, 2023
Ends: 5:00 p.m. Austin local time on December 11, 2023**

Comments received after 5:00 p.m. Austin local time on December 11, 2023 will not be accepted.

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

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

Written comments may be submitted in hard copy or email formats within the designated public comment period. Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or citation associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
Street Address: 221 East 11th Street, Austin, TX 78701
Mailing Address: PO Box 13941, Austin, TX 78711-3941
Main Number: 512-475-3800 Toll Free: 1-800-525-0657
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Departamento de Vivienda y Asuntos Comunitarios de Texas

Borrador aprobado por la Junta Directiva del TDHCA de las modificaciones propuestas a las reglas de supervisión de cumplimiento incluidas en la sección (§)10.602 [“Notificación a los propietarios y períodos de medidas correctivas”], la sección (§) 10.606 [“Inspecciones de construcción”], la sección (§) 10.621 [“Estándares de condiciones de propiedades”], la sección (§) 10.623 [“Procedimientos de supervisión para propiedades bajo el Programa de Crédito Tributario de Vivienda después del periodo de cumplimiento”] y la sección (§) 10.625 del subcapítulo F del capítulo 10 del título 10 del Código Administrativo de Texas (TAC)

Descargo de responsabilidad

Se adjunta un borrador de las modificaciones propuestas (“Regla de supervisión de cumplimiento para corporaciones de instalaciones públicas”) al capítulo 10 del título 10 del Código Administrativo de Texas (TAC), que fueron aprobadas por la Junta Directiva del TDHCA el 26 de octubre de 2023. El documento adjunto refleja todos los cambios propuestos en los cambios efectuados para facilitar la revisión. Este documento, incluyendo su preámbulo, está programado para publicarse en la edición del *Texas Register* del 10 de noviembre de 2023; esa versión publicada constituirá la versión oficial para fines de comentarios del público. La versión aquí mencionada es solo informativa y no debe considerarse como fundamento para comentarios del público

Resumen del documento y los cambios propuestos: el personal recomienda una modificación de la regla para actualizar los períodos de medidas correctivas exigidas cuando las fechas límite federales puedan sustituir otras fechas límite de medidas correctivas y eliminar las referencias a las Normas Uniformes de Condiciones Físicas (UPCS, por sus siglas en inglés), reemplazándolas por las Normas Nacionales para la Inspección Física de Bienes Raíces (NSPIRE), las nuevas normas de inspección física del Departamento de Vivienda y Desarrollo Urbano (HUD).

De conformidad con la sección (§) 2001.023 del Código de Gobierno de Texas, se facilita un resumen del documento propuesto: Asimismo, de conformidad con la sección §2001.023(c) del Código de Gobierno de Texas, esta portada y resumen se ofrecen tanto en inglés como en español.

Comentarios del público

Periodo de comentarios del público: Inicio: 8:00 a. m., hora local de Austin, del 10 de noviembre de 2023

Finalización: 5:00 p. m., hora local de Austin, del 11 de diciembre de 2023

No se aceptarán los comentarios que se reciban después de las 5:00 p. m., hora local de Austin, del 11 de diciembre de 2023.

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

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

Los comentarios por escrito pueden presentarse en formato impreso o por correo electrónico dentro del período designado de comentarios del público. Se anima a quienes formulen comentarios públicos a que hagan referencia al borrador de la regla, política o plan específico relacionado con su comentario, así como una referencia o cita específica asociada a cada comentario.

Tenga en cuenta que todos los comentarios enviados al TDHCA se considerarán información pública.

DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS

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

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

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BOARD ACTION REQUEST

COMPLIANCE DIVISION

OCTOBER 12, 2023

Presentation, discussion, and possible action on an order proposing amendments to 10 TAC Chapter 10, Subchapter F, §10.602 Notice to Owners and Corrective Action Periods; §10.606 Construction Inspections; §10.621 Property Condition Standards; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; and Figure §10.625 and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

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

WHEREAS, the current rule relating to applicability of state and federal inspections and corrective action periods is in need of revisions to ensure that the federal guidance requirements related to the new inspection protocol of National Standards for Physical Inspections of Real Estate (NSPIRE) are clearly described in the Department's monitoring;

WHEREAS, staff proposes amending the current Compliance rule to clarify, add, and remove requirements for Developments monitored and inspected by the Department; and

WHEREAS, such proposed amendments will be published in the *Texas Register* for public comment from November 10, 2023, to December 11, 2023, and subsequently returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed action, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connections, as they may deem necessary to effectuate the forgoing, including the preparation and requested revisions to the subchapter specific preambles.

BACKGROUND

Tex. Gov't Code §2306.053 provides for the Department to administer federal housing, community affairs, and community development programs, including the low-income housing tax credit program. The Compliance Division and its Rules, as a whole, are an integral part of monitoring the Department's federal housing programs, assisting in: reviewing and ensuring long-term affordability, compliance and

safety of multifamily rental housing Developments in the Department's portfolio as required under Tex. Gov't Code §§2306.185 and 2306.186; performing the functions of monitoring compliance as required under §§2306.6719; and performing essential functions required under various federal program (HOME, ERA, HOME-Match, HOME-ARP, NSP, NHTF, TCAP-RF, Exchange, TCAP, Bond, 811 PRA) rules and under Section 42 of the Internal Revenue Code.

The National Standards for the Physical Inspection of Real Estate (NSPIRE) is the new Housing and Urban Development (HUD) physical inspection standard protocol designed to reduce health and safety hazards in a home. NSPIRE was published in the *Federal Register* on May 11, 2023, and the new inspection standard is effective for the Department's multifamily programs on October 1, 2023. The current inspection standard used by the Department, Uniform Physical Condition Standards (UPCS) was being replaced on September 30, 2023, by HUD. NSPIRE focuses on the condition of dwelling units and streamlines the inspection processes using objective, defensible, and consistent assessments to evaluate housing conditions. The key changes with this new inspection protocol are based on deficiency indicators to ensure deficiencies cited by inspectors accurately reflect the conditions of the development. Though NSPIRE does place more emphasis on the condition of the dwelling units, this aligns with the Department's mission of ensuring the health and safety of TDHCA's housing portfolio, and focuses the expenditure of state and federal resources in an efficient and effective manner.

The proposed draft of the 2023 Compliance Monitoring Rules reflects staff's recommendations for the Board's consideration. Behind the proposed preamble for the proposed rule action is the rule shown in its blackline form reflecting changes to the rule that is proposed for repeal.

Only the sections noted in the recitals and proposed for action will be published in the *Texas Register* for public comment. Proposed substantive changes are explained below.

Upon Board approval, the proposed sections of the rule will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted from October 27, 2023, through November 27, 2023. The Compliance Monitoring Rules, after consideration for public comment, will be brought before the Board at its January 2024 Board meeting, for final approval and subsequently published in the *Texas Register* for adoption.

Summary of Proposed Changes:

§10.602 Notice to Owners and Corrective Action Periods. Staff is proposing to expand this subsection to include that when applicable, federal deadlines may supersede other corrective action deadlines.

§10.606 Construction Inspections. Staff is proposing deleting references to UPCS and replacing it with NSPIRE.

§10.621 Property Condition Standards. Staff is proposing deleting references to UPCS and replacing it with NSPIRE along with the timeframe to correct deficiencies that are required by the inspection protocol. In addition, the proposed rule expands the requirements for Owners to request the Department review the NSPIRE score when they disagree.

§10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period. Staff is proposing deleting reference to UPCS and replacing it with NSPIRE.

Figure §10.625. Staff is proposing deleting references to UPCS and replacing it with NSPIRE. Staff is also adding language to the penalty chart to reflect the Emergency Rental Assistance and HOME Match Program Requirements.

Attachment A: Preamble, including required analysis, for proposed amendments to §10.602 Notice to Owners and Corrective Action Periods; §10.606 Construction Inspections; §10.621 Property Condition Standards; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; and Figure §10.625

The Texas Department of Housing and Community Affairs (the Department) proposes amending §10.602 Notice to Owners and Corrective Action Periods; §10.606 Construction Inspections; §10.621 Property Condition Standards; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; and Figure §10.625. The amendments will delete references to an inspection protocol that is being sunset on September 30, 2023, and replace it with HUD's new inspection protocol, NSPIRE. Additionally, the amendments will clarify when corrective action deadlines may be superseded by federal requirements and adds clarification on the actions when an Owner must take when they disagree with an NSPIRE inspection score.

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

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

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

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be the clarification of a required definition. There will not be any economic cost to any individual required to comply with the amendment.

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

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this action may be submitted in writing from November 10, 2023, through December 11, 2023. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Compliance Monitoring Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email wendy.quackenbush@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, December 11, 2023.

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

§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) timely or if the Department discovers through monitoring, audit, inspection, review, or any other manner that the Development is not in compliance with the provisions of the LURA, deed restrictions, application for funding, conditions imposed by the Department, this subchapter, or other program rules and regulations, including but not limited to §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 30 day Corrective Action Period for noncompliance related to the AOCR, and a 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 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 90 day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: compliance.extensionrequest@tdhca.state.tx.us. If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each finding, but does not fully address all findings, the Department will give the Owner written notice and an additional 10 calendar day period to submit evidence of full corrective action. References in this subchapter to the Corrective Action Period include this additional 10 calendar day 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), and ensure that such information is at all times current and correct.

(d) The Department will notify 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 at all times that 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 or regulation, Events of Noncompliance will not be reported to the IRS, referred for enforcement action, considered as cause for possible debarment, or reported in an applicant's compliance history or Previous Participation Review, until after the end of the Corrective Action Period described in this section.

(f) Upon receipt of facially valid complaints the Department may contact the Owner and request submission of documents or written explanations to address the issues raised by the complainant. The deadline to respond to the issue will be specific to the matter. Whenever possible and not otherwise prohibited or limited by law, regulation, or court order, the complaint received by the Department will be provided along with the request for documents or Owner response.

(g) If another federal or state requirement applicable to funding or resources that the Department monitors stipulates that corrective action must be completed with less than a 90 day Corrective Action Period, the Department will inform the Owner in writing and enforce the applicable timeframe.

§10.606 Construction Inspections

(a) Owners are required to submit evidence of final construction within 30 calendar days of completion in a format prescribed by the Department. Owners are encouraged to request a final construction inspection promptly to allow the Department to inspect Units prior to occupancy to avoid disruption of households in the event that corrective action is required. 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.

(b) During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable accessibility requirements. In addition, a ~~Uniform Physical Condition Standards~~ National Standards for the Physical Inspection of Real Estate may be completed.

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

§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)~~ National Standards for the Physical Inspection of Real Estate (NSPIRE) to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes. Timelines for correcting deficiencies under the NSPIRE standards are as follows:

(1) Life-Threatening and Severe deficiencies must be corrected within 24 hours.

(2) Moderate deficiencies must be corrected within 30 days.

(3) Low deficiencies must be corrected within 60 days.

(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-NSPIRE~~ or local codes at any time during the compliance period to the IRS on IRS Form 8823. Accordingly, the Department will submit IRS Form 8823 for any ~~UPCS-NSPIRE~~ 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-NSPIRE~~ 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 30 days.

(2) Units vacant for more than 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-NSPIRE~~ 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 45 calendar days of receiving the initial ~~UPCS-NSPIRE~~ inspection report and score. The request must be accompanied by evidence that supports the claim-control occurred, which if corrected will result in a significant improvement in the

overall score of the property. Upon receipt of this request from the Owner the Department will review the inspection and evidence. If the Department's review determines that an objectively verifiable and material error (or errors) or adverse condition(s) beyond the Owner's control has been documented and that it is likely to result in a significant improvement in the Development's overall score, the Department will take one or a combination of the following actions:

- (1) Undertake a new inspection;
- (2) Correct the original inspection; or
- (3) Issue a new physical condition score.

(g) The responsibility rests with the Owner to demonstrate that an objectively verifiable and material error (or errors) or adverse conditions occurred in Department's inspection through submission of materials, which if corrected will result in a significant improvement in the Development's overall score. To support its request for a technical review of the physical inspection results, the Owner may submit photographic evidence, written material from an objective source with subject matter expertise that pertains to the item being reviewed such as a local fire marshal, building code official, registered architect, or professional engineer, or other similar third party-documentation.

(gh) 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-NSPIRE 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 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. However, if the Owner has an agreement with the city/county/state for the responsibility of maintenance on accessible routes including sidewalks, then the Owner will be responsible for any repairs.

(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~~ technical review process 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).~~

(i) All ~~Exigent and Fire Safety (E&FS or EH&S) Life-Threatening and Severe~~ deficiencies must be corrected immediately within 24 hours. Project Owner's Certification That All ~~Exigent and Fire Safety Life Threatening and Severe~~ Deficiencies Have Been Corrected must be completed and uploaded to CMTS within 72 hours (three Department business days).

§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 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) - (14) 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 requests;

(2) At least once every three years the property will be physically inspected including the exterior of the Development, all building systems and 10% of Low-Income Units. No less than five but no more than 35 of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's ~~Uniform Physical Condition Standards~~ National Standards for the Physical Inspection of Real Estate;

(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 subchapter (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 are accounted for in the utility allowance. TCAP, Exchange, Bond, and THTF Developments layered with Housing Tax Credits no longer within the Compliance Period also include utilities paid to the Owner as part of 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 or if the Compliance Period was specifically extended beyond 15 years;

(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 can be maintained Development wide;

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

(13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status student status 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; and

(14) Employee occupied units will be treated in the manner prescribed in §10.622(h) of this chapter (relating to Special Rules Regarding Rents and Rent Limit Violations).

(c) After the first 15 years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (4) 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% 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);

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

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

(4) Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance with subsection (b)(13) of this section.

(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 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.

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Figure: 10 TAC §10.625

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Violations of the Uniform Physical Condition Standards National Standards for the Physical Inspection of Real Estate or Local Codes	All Programs	Yes
Noncompliance related to Affirmative Marketing requirements	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 or other Fair Housing noncompliance to the Texas Workforce Commission	All programs	No
Development has gone through a deed in lieu of foreclosure or foreclosure	All programs	Yes
Development is never expected to comply due to failure to report or allow monitoring	All programs	Yes
Owner did not allow {on-site }monitoring or physical inspection and/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
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 §10.404 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 monitoring and/or physical inspection documentation	All programs	No
Failure to provide amenity as required by LURA	All programs	No

Failure to pay asset management, compliance monitoring or other required fee	HTC, TCAP, ERA , Bond, NHTF, TCAP-RF, Exchange, HOME-ARP, HOME Match , and HOME and /NSP	No
Change in ownership without De partment approval (other than removal of a general partner in accordance with §10.406 of this chapter)	All programs	No
Noncompliance with written policy and procedure requirements	All programs	No, unless finding is because Owner refused to lease to Section 8 households
Program Unit not leased to Low-Income household/ Household income above income limit upon initial occupancy	All programs	Yes
Program unit occupied by nonqualified students	HTC during the Compliance Period, Bond, HOME/ NSP developments committed funds after August 23, 2013, and , 811, and HOME-ARP Developments	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
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	All programs	No
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	HTC, HOME, HOME-ARP, ERA , HOME Match , TCAP- RF,	Yes
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	HOME, TCAP-RF, HOME Match, ERA , and HOME ARP	No
Violation of the Integrated Housing Rule	All programs	No
Failure to resolve final construction deficiencies within the corrective action period	All programs	No
Noncompliance with the required accessibility requirements such as §504 of the Rehabilitation Act of 1973, the 2010 ADA standards as modified in the Department rules, or other accessibility related requirements of a Department rule	HOME, HOME-ARP, HOME Match , NSP, TCAP- RF, ERA NHTF, THTF, and for those HTC properties that were awarded	No
Noncompliance with the notice to the Department requirements described in §10.609 of this subchapter	All programs	No
Failure to reserve Units for Section 811 participants	811 developments	No
Failure to notify the Department of the availability of units	811 developments	No
Owner failed to check required criminal history	811 developments	No

Failure to use Enterprise Income Verification System	811 developments	No
Failure to properly document and calculate adjusted	811 developments	No
Failure to use required HUD forms	811 developments	No
Accepted funding that limits Section 811 participation	811 developments	No
Failure to properly calculate tenant portion of rent	811 developments	No
Failure to use HUD model lease	811 developments	<u>No</u>
Failure to disperse Section 811 units	811 developments	No
Failure to conduct interim certifications	811 developments	No
Failure to conduct annual income recertification	811 developments	No
Asset Management Division has reported that Development-Owner has failed to submit rents on an annual basis in accordance with §10.403 of this chapter	HOME, NSP, TCAP RF, HOME Match , HOME-ARP, and NHTF	No
Unit Leased to a household that is not qualified for the 811 PRA program	811 developments	No
Noncompliance with CHDO Requirements	HOME	No
Failure to disperse unit designations across all unit types – Average Income only	HTC	No
Household income designations was improperly changed or removed	All programs	No

Failure to maintain the specific unit mix required in the Land Use Restriction Agreement (LURA)	HOME, HOME-ARP, ERA, HOME Match, TCAP-RF, and NHTF	No
Increased a household's rent more than one time during a 12-month period	All programs	No
Failure to issue a notice of rent increase in accordance with §10.622(k)	All programs	No
Failure to market to veterans as required in the LURA	HTC	No
Failure to include veteran statement in the application	All programs	No
Failure to properly calculate and/or collect security deposit-Section 811 only	Section 811	No
Development inaccurately charged an application or late fee- Section 811 only	Section 811	No
Failure to issue utility allowance reimbursement in accordance with Section 811 only	Section 811	No
Failure to issue HUD Notices – Section 811	Section 811	No
Failure to submit completed IRS Form(s) 8609 with Part II completed by the first year of the credit period	HTC, Exchange, and TCAP	No
Failure to provide notice to applicants and households prior to the LURA term ending	All programs	No