

TITLE 10                   COMMUNITY DEVELOPMENT  
PART 1                    TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 2               ENFORCEMENT

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**Subchapter A. General**

§2.101. Policy and Purpose

(a) In accordance with authority conferred on the Department by Texas Government Code, Chapters 2105 and 2306 and under applicable provisions of federal law the Department has a range of measures it is able to take to address identified instances of noncompliance. In some instances these measures may also require compliance with or adherence to additional federal or state requirements.

(b) It is the overarching intent and guiding principle of these rules that full compliance is required, and the enforcement mechanisms provided for herein are intended to be used in a manner which:

- (1) Promotes full compliance;
- (2) Uses compliance assistance methods and, where needed, enforcement mechanisms, to obtain compliance and to deter noncompliance;
- (3) Takes appropriate enforcement action against those who fail to take the necessary and appropriate measures to comply; and
- (4) Provides for the exclusion or removal from Department programs, of persons who have demonstrated that they are either unable or unwilling to comply.

(c) Any person or entity that enters into a commitment or contract with the Department directly or with a subrecipient of Department financial assistance, setting forth the terms and conditions under which housing tax credits, loans, grants, or any other source of funds or financial assistance from the Department will be made available (collectively the "Program Agreements") is required to comply with all provisions of their respective Program Agreements. Requirements in Program Agreements include requirements to comply with applicable federal or state laws. The failure to comply with any provision of a Program Agreement is, in addition to a breach of such Program Agreement, a violation of this rule.

(d) This chapter sets forth the mechanisms that the Department may use to bring about compliant administration of Department funded programs, state or federal, and to ensure that persons who have established, through egregious and/or repetitive noncompliance behavior that they are either unwilling to behave in a compliance manner or are unable to do so.

(e) Refer to Chapter 10, Subchapter F of this title (relating to Compliance Monitoring) and/or Chapter 5, Subchapter L of this title (relating to Compliance Monitoring) for detailed information about the monitoring process and remedies available to Persons who disagree with the Department's assessment of their compliance status.

#### §2.102. Definitions

The words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Consultant--One who provides services or advice for a fee and not as an employee.
- (2) Enforcement Committee (Committee)--A committee of employees of the Department appointed by the Executive Director. The members of that Committee shall be no fewer than five (5) and no more than nine (9). The Executive Director may designate certain members as ex officio and non-voting. Legal Services and Compliance will each designate persons to attend meetings and advise the Committee, but not be members of the Committee. A Legal Services designee will also serve as Secretary to the Committee. Voting Committee members may designate a substitute who shall be permitted to attend and vote in their absence.
- (3) Legal Requirements--All requirements of state, federal, or local statute, rule, regulation, ordinance, order, court order, official interpretation, policy issuance, OMB Circulars, representations to secure awards, or any similar memorialization of requirement including a requirement of a purely contractual nature, no matter how designated, applicable to a matter.
- (4) Program Agreements include:
  - (A) agreements between the Department and a person setting forth Legal Requirements; and
  - (B) agreements between a person subject to a Program Agreement and a third party to carry out one or more of those Legal Requirements as the agent, consultant, partner, contractor, subcontractor, or otherwise for a person described in paragraph (1) of this section.
- (5) Responsible Party--Any Person subject to a Program Agreement.
- (6) Vendor--A person who is procured by a subrecipient to provide goods or services in any way relating to a Department program or activity.

#### §2.103. General.

- (a) A Responsible Party must comply with all applicable Legal Requirements.
- (b) A failure by the Department to identify, address, or take action with respect to any one or more instances of noncompliance does not constitute a waiver, ratification, or approval of, consent to, or agreement with such noncompliance. It is the responsibility of a Responsible Party to be familiar with the applicable requirements.
- (c) Record keeping. The Compliance Division will keep records in accordance with the Department's record retention schedule and any other state or Federal requirements of all instances of identified noncompliance, whether the noncompliance was correctable or not, and, if correctable, whether the noncompliance was corrected within the time afforded for corrective action.

(d) As provided for in Texas Government Code, §2306.6719, parties subject to certain compliance requirements must be afforded written notice and a reasonable period to correct identified instances of noncompliance that are susceptible to being corrected. It is the responsibility of each division to provide any required cure, corrective action, or notice period(s) prior to referral of any matter to the Committee under this chapter. Matters should not be referred to the Committee until such cure, corrective action, or notice periods have been completed or expired.

#### §2.104. Enforcement Mechanisms

(a) The enforcement mechanisms referenced in this chapter are not the exclusive mechanisms whereby compliance may be obtained in any particular circumstance. In addition to Department action, enforcement mechanisms related to Department programs may include, where applicable, those required or employed by other entities or agencies. With regard to the low income housing tax credit program, if an identified instance of noncompliance is required by the Internal Revenue Service ("IRS") to be reported to the IRS, it will be reported to the IRS by the Compliance Division on Form 8823.

(b) Enforcement mechanisms available to the Department include but are not limited to:

- (1) Enforcement of contractual provisions, including but not limited to, rights of suspension or termination and placement on a cost reimbursement status, as described in Subchapter B of this chapter (relating to Enforcement Regarding Community Affairs Contract Subrecipients);
- (2) Assessment of Administrative Penalties, as described in Subchapter C of this chapter (relating to Administrative Penalties); or
- (3) Debarment, as described in Subchapter D of this chapter (relating to Debarment).

### **Subchapter B. Enforcement Regarding Community Affairs Contract Subrecipients**

#### §2.201. Modified Reimbursement.

(a) Modified cost reimbursement may be in the form of Full or Partial cost reimbursement.

- (1) Full cost reimbursement requires that the Department, acting through or by oversight of the Compliance Division, review any item and supporting documentation and backup before approving it for payment.
- (2) Partial cost reimbursement enables the Department, acting through or by oversight of the Compliance Division, to establish a tailored protocol to review only a portion of requests for reimbursement and, based on that review, to allow for advances subject to reasonable and appropriate limitations.

(b) The Department through its Compliance Division may place on Modified Cost Reimbursement any entity administering a Department program allowing for funds to be advanced prior to documentation of expenditure where there has been identified a significant pattern of compliance violations indicating a material failure to adopt and adhere to policies and procedures to ensure compliant activity.

(c) An entity placed on Modified Cost Reimbursement must, within ninety (90) days of written notice by the Department, unless extended as provided for herein, either be restored to advance status or have proceedings for termination of their contract and/or eligible entity status and/or debarment commenced. Restoration to advance status will require the entity to develop a comprehensive plan, which, if the entity is an eligible entity under the CSBG Act, will constitute a Quality Improvement Plan as provided for in the CSBG Act, to address its issues. The plan must be reviewed and acceptable to the Department after a review by the Compliance Division and the Community Affairs Division. Extensions of up to an additional ninety (90) days may be approved by the Executive Director for good cause including but not limited to additional time to comply with procurement requirements or additional time for the Department to review submittals.

#### §2.202. Sanctions and Contract Closeouts

(a) Subrecipients that enter into a contract with the Department to administer programs are required to follow all Legal Requirements governing these programs.

(b) If a subrecipient fails to comply with program and contract requirements, rules, or regulations and in the event monitoring or other reliable sources reveal material deficiencies in performance, or if the Subrecipient fails to correct any deficiency within the time allowed by federal or state law, the Department may apply one or more of the sanctions described in paragraphs (1) - (5) of this subsection:

(1) Deny the subrecipient's requests for advances and place it on a Modified Cost Reimbursement method of payment until proof of compliance with the rules and regulations are received by the Department:

(A) Subrecipients placed on a Modified Cost Reimbursement method of payment must comply with the reporting requirements outlined in §5.211 of this title (relating to Subrecipient Reporting Requirements); §5.406 of this title (relating to subrecipient Reporting Requirements); §5.506 of this title (relating to subrecipient Reporting Requirements); §5.1006 of this title (relating to Performance and Expenditure Benchmarks); and §5.2007 of this title (relating to Reporting), as applicable;

(B) Subrecipients on a Modified Cost Reimbursement method must provide all supporting documentation to the Department no later than seven (7) days after the reporting due date;

(C) If subrecipient has not submitted documentation required for cost reimbursement review in accordance with reporting deadlines, Subrecipient may be required to enter a monthly report containing zero amounts and submit documentation required for the review as part of the next's month reporting;

(D) Subrecipients reporting a monthly report containing zero amounts throughout the program year shall submit all required support documentation to the Department for review by the last regular monthly report (before the final report); and/or

(E) The Department will review and assess supporting documentation submitted by subrecipient no later than the seventh (7th) day of the following month.

(2) Withhold all payments from the Subrecipient (both reimbursements and advances) until acceptable confirmation of compliance with the rules and regulations are received by the Department, reduce the allocation of funds (with the exception of Community Services Block Grant ("CSBG")) to Eligible Entities as described in §5.206 of this title (relating to Termination and Reduction of Funding) and as limited for LIHEAP funds as outlined in Texas Government Code, Chapter 2105 or impose sanctions as deemed appropriate by the Department's Executive Director, at any time, if the Department identifies possible instances of fraud, waste, abuse, fiscal mismanagement, or other serious deficiencies in the subrecipient's performance;

(3) Suspend performance of the contract or reduce funds until proof of compliance with the rules and regulations are received by the Department or a decision is made by the Department to initiate proceedings for contract termination;

(4) If possible, elect not to provide future grant funds to the Subrecipient until appropriate actions are taken to ensure compliance; or

(5) Terminate the contract. Adhering to the requirements governing each specific program administered by the Department, as needed, the Department may determine to proceed with the termination of a contract, in whole or in part, at any time the Department establishes there is good cause for termination. Such cause may include, but is not limited to, fraud, waste, abuse, fiscal mismanagement, or other serious deficiencies in the Subrecipient's performance. For CSBG contract termination procedures, please refer to §5.206 of this title.

(c) Contract Closeout. When the Department moves to terminate a contract and such termination takes effect, the procedures described in paragraphs (1) - (12) of this subsection will be implemented.

(1) The Department will issue a termination letter to the subrecipient no less than thirty (30) days prior to terminating the contract. If the entity is an Eligible Entity under the CSBG Act the Department, after the rights and due processes of the CSBG Act have been followed will simultaneously initiate proceedings to terminate the Eligible Entity status and the effectiveness of the contractual termination will be stayed automatically pending the outcome of those proceedings. The Department may determine to take one of the following actions: suspend funds immediately or allow a temporary transfer to another provider; establish a Modified Cost Reimbursement plan for closeout proceedings, or provide instructions to the Subrecipient to prepare a proposed budget and written plan of action that supports the closeout of the contract. The plan must identify the name and current job titles of staff that will perform the closeout and an estimated dollar amount to be incurred. The plan must identify the CPA firm which will perform the Single Audit. The Department will issue an official termination date to allow all parties to calculate deadlines which are based on such date.

(2) If the Department determines that a Modified Cost Reimbursement is an appropriate method of providing funds to accomplish closeout, the subrecipient will submit backup documentation for all current expenditures associated with the closeout. The required documentation will include, but not be limited to, the chart of accounts, detailed general ledger, revenue and expenditure statements, time sheets, payment vouchers and/or receipts, and bank reconciliations.

(3) No later than thirty (30) days after the contract is terminated, the subrecipient will take a physical inventory of client files, including case management files, and will submit to the Department an inventory of equipment with a unit acquisition cost of \$5,000 or greater or having a useful life of more than one year.

(4) The terminated subrecipient will have thirty (30) days from the date of the physical inventory to copy all current client files. Client files must be boxed by county of origin. Current and active case management files also must be copied, inventoried, and boxed by county of origin.

(5) Within thirty (30) days following the subrecipient due date for copying and boxing client files, Department staff will retrieve copied client files.

(6) The terminated subrecipient will prepare and submit no later than thirty (30) days from the date the Department retrieves copied client files, a final report containing a full accounting of all funds expended under the contract.

(7) A final monthly expenditure report and a final monthly performance report for all remaining expenditures incurred during the closeout period must be received by the Department no later than sixty (60) days from the date the Department determines that the closeout of the program and the period of transition are complete.

(8) The subrecipient will submit to the Department no later than sixty (60) days after the termination of the contract, an inventory of the non-expendable personal property acquired in whole or in part with funds received under the contract.

(9) The Department may transfer title to equipment having a unit acquisition cost (the net invoice unit price of an item of equipment) of \$5,000 or greater or having a useful life of more than one year, to the Department or to any other entity receiving funds under the program in question. The Department will make arrangements to remove equipment covered by this paragraph within ninety (90) days following termination of the contract.

(10) Upon selection of a new service provider, the Department will transfer to the new provider client files and, as appropriate, equipment.

(11) As required by any OMB circular or other circulars and standards as applicable to the contract, as amended from time to time, a current year Single Audit must be performed for all agencies that have exceeded the federal expenditure threshold under OMB Circular A-133 or the State expenditure threshold under Uniform Grant Management Standards. The Department will allow a proportionate share of program funds to pay for accrued audit costs, when an audit is required, for a Single Audit that covers the date up to the closeout of the contract. The terminated subrecipient must have a binding contract with a CPA firm on or before the termination date of the contract. The actual costs of the Single Audit and accrued audit costs including support documentation must be submitted to the Department no later than sixty (60) days from the date the Department determines the closeout is complete.

(12) Subrecipients shall submit within sixty (60) days after the date of the closeout process all financial, performance, and other applicable reports to the Department. The Department may approve extensions when requested by the Subrecipient. However, unless the Department authorizes an extension, the Subrecipient must abide by the sixty (60) day contractual requirement of submitting all referenced reports and documentation to the Department.

## **Subchapter C. Administrative Penalties.**

### **§2.301. General.**

The Compliance Division will recommend to the Committee the initiation of proceedings to assess administrative penalties where the Responsible Party or Parties have violated Chapter 2306 of the Texas Government Code or a rule or order adopted under Chapter 2306 of the Texas Government Code and failed, despite written notice, to take appropriate and timely corrective action or seek and obtain for good cause an extension of the time to take corrective action. In addition, the Compliance Division may recommend to the Committee the initiation of proceedings to assess administrative penalties where the Responsible Party or Parties has an established pattern of repeated substantive and material violations even if corrected within the applicable corrective action periods.

§2.302. Administrative Penalty Process.

- (a) The Executive Director will appoint an Enforcement Committee, as defined in §2.102 of this chapter (relating to Definitions).
- (b) The Compliance Division will recommend the initiation of administrative penalty proceedings to the Committee by referral of a compliance monitoring matter to the secretary of the Committee.
- (c) The secretary of the Committee shall promptly contact the Responsible Party describing the violations involved. If the secretary is able to facilitate closure of the matter without further action by the Committee, the secretary will report back to the Compliance Division. Should the secretary and Responsible Party fail to come to closure, the matter will be presented to the Committee for possible action.
- (d) The Committee will first offer to hold an informal meeting with the Responsible Party to attempt to reach an agreed resolution. If any such meeting is held:
  - (1) Statements made in the meeting shall not be used as evidence in any proceedings if agreed resolution is not reached. This does not preclude establishing such matters through the introduction of proper evidence;
  - (2) The Responsible Party may, but is not required to be, represented by legal counsel of their choosing at their own cost and expense;
  - (3) The Responsible Party may bring to the meeting third parties, employees, and agents with knowledge of the issues; and
  - (4) In order to facilitate candid dialogue, informal meetings will not be open to the public; however, the Committee may include such other persons or witnesses as the Committee deems necessary for a complete and full development of relevant information and evidence.
- (e) An informal meeting may result in:
  - (1) An agreement to dismiss the matter with no further action, which will then be reported to the Executive Director;
  - (2) A Compliance Assistance Notice issued by the Committee, available for Responsible Parties appearing for the first time before the committee for matters which the Committee determines do not necessitate the assessment of an administrative penalty, but for which the Committee wishes to place the Responsible Party on specific notice with regard to possible future violations;
  - (3) An agreement to resolve the matter through corrective action without penalty. In this circumstance, the agreement shall be reported to the Executive Director;

(4) An agreement to resolve the matter through corrective action with the assessment of an administrative penalty which may be probated in whole or in part, and may, where appropriate, include additional action to promote compliance such as agreements to obtain training. In this circumstance, a proposed agreed order and draft report will be prepared and presented to Board for approval;

(5) A recommendation by the Committee to the Executive Director regarding the issuance of a report to the Board and issuance of a Notice of Violation to the Responsible Party seeking the assessment of administrative penalties;

(6) A determination that the Responsible Party should be referred for debarment, in which case the Responsible Party will be offered another opportunity to appear before the Committee, shall be reported to the Executive Director; or

(7) Other action as the Committee deems appropriate, shall be reported to the Executive Director.

(f) Upon receipt of a recommendation from the Committee regarding the issuance of a report and assessment of an administrative penalty, the Executive Director shall determine whether a violation has occurred. If needed, the Executive Director may request additional information and/or return the recommendation to the Committee for further development. If the Executive Director determines that a violation has occurred, the Executive Director will issue a report to the Board in accordance with §2306.043 of the Texas Government Code.

(g) Not later than fourteen (14) days after issuance of the report to the Board, the Executive Director will issue a Notice of Violation to the Responsible Party. The Notice of Violation issued by the Executive Director will include:

(1) a summary of the alleged violation(s) together with reference to the particular sections of the statutes and rules alleged to have been violated;

(2) a statement informing the Responsible Party of the right to a hearing before the State Office of Administrative Hearings ("SOAH"), if applicable, on the occurrence of the violation(s), the amount of penalty, or both;

(3) any other matters deemed relevant; and

(4) the amount of the recommended penalty. In determining the amount of a recommended administrative penalty, the Executive Director shall take into consideration whether the Responsible Party has timely taken appropriate actions within their control, the amount of penalty necessary to deter future violations, and, in the instance of a proceeding to assess administrative penalties against a Responsible Party administering CSBG, CEAP, ESG or HHSP, whether the assessment of such penalty will interfere with the uninterrupted delivery of services under such program(s). He or she shall further take into account whether the Department's purposes may be achieved or enhanced by the use of full or partial probation of penalties subject to adherence to specific requirements and whether the violation(s) in question involve disallowed costs or other matters giving rise to financial exposure to the Department.

(h) The amount of recommended penalty will be determined with reference to a penalty schedule shown in the tables in subsection (j) of this section.

(i) Not later than twenty (20) days after the Responsible Party receives the Notice of Violation, the Responsible Party may accept the determination and recommended penalty or request a hearing.

(j) If the Responsible Party requests a hearing or does not respond to the Notice of Violation, the Executive Director, with the approval of the Board, shall cause the hearing to be docketed before a SOAH administrative law judge in accordance with Chapter 1, §1.13 of this title (relating to Adjudicative Hearing Procedures).

Figure 1: 10 TAC §2.302(j)

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Lack of financial duties or material inventory segregation of duties	Up to \$500	Up to \$1,000
No Cost Allocation/Not Cost Allocating properly	Up to \$500 for each instance	Up to \$1,000 for each instance
Violation of Texas Public Information Act	Up to \$1,000 for each instance + up to \$100 for each day the entity failed to comply	Up to \$1,000 for each instance + up to \$200 for each day the entity failed to comply
Lack of Insurance or Fidelity Bond Coverage	Up to \$1,000 + up to \$100 a day for each day not in compliance	Up to \$1,000 + up to \$200 a day for each day not in compliance
Failure to submit Inventory Report within 45 days (end of contract period)	Up to \$500	Up to \$1,000
Unallowable/Unreasonable expenditure	Up to \$1,000 for each instance	Up to \$1,000 for each instance
Violation of Procurement Requirements	Up to \$1,000 for each service or product not procured	Up to \$1,000 for each service or product not procured
Lack of Subcontractor contract	Up to \$250 for each instance	Up to \$500 for each instance
Lack of prior approval for purchase(s)	Up to \$500 for each instance	Up to \$1,000 for each instance
Instance of Fraud, Waste and/or Abuse	Up to \$1,000	Up to \$1,000
Commingling of funds, Misapplication of funds.	Up to \$1,000	Up to \$1,000
Failure to timely submit Audit Certification Form	Up to \$250	Up to \$1,000 per violation
Failure to timely submit Single Audit	Up to \$1,000	Up to \$1,000 + up to \$100 for each day not in compliance
Lack of providing requested documentation/item(s) for monitoring	Up to \$500 per day for each item or documentation not provided	Up to \$150 per day for each item or documentation not provided

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Failure to timely respond to Report/provide required correspondence	Up to \$100 for first violation	Up to \$1,000 per day per violation
Failure to report/record program income	Up to \$500 for each instance	Up to \$1,000 for each instance
Noncompliance with record retention requirements	Up to \$100 for each instance	Up to \$1,000 for each instance
Providing assistance to income or SAVE ineligible applicants	Up to \$500 for each instance	Up to \$1,000 for each instance
Service provided to clients not according to poverty population makeup	Up to \$500	Up to \$1,000
Failure to meet Board of Director Requirements	Up to \$1,000 + up to \$100 for each day the entity failed to comply	Up to \$1,000 + up to \$250 for each day the entity failed to comply
Failure to comply with Department minimum applicant/client denials and appeals	Up to \$250 for each instance	Up to \$500 for each instance
Failure to Prioritize applicants	Up to \$250 for each instance	Up to \$500 for each instance
Lack of providing Assurance 16 activities	Up to \$250 for each instance	Up to \$500 for each instance
Failure to complete or to properly complete required program documents	Up to \$250 for each instance	Up to \$750 for each instance
Failure to complete or properly complete a process required by Chapter 5 of this title.	Up to \$250 for each instance	Up to \$750 for each instance
Payment to Vendor without a Vendor Agreement	Up to \$500 for each instance	Up to \$1,000 for each instance
Failure to perform Outreach activities	Up to \$500	Up to \$1,000
Weatherized unit expenditure over maximum cost per unit w/o prior approval	Up to \$500 for each instance	Up to \$1,000 for each instance
Failure to input HHSP client data into the Homeless Management Information System	Up to \$500 for each instance	Up to \$1,000 for each instance
Other noncompliance with a contract requirement	Up to \$1,000	Up to \$1,000

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Failure to comply with case management requirements	Up to \$500	Up to \$750
Noncompliance with Material Installation Standards Manual	Up to \$500	Up to \$750
Noncompliance with applicable OMB or state financial management requirements	Up to \$500	Up to \$1,000
Noncompliance with Texas Prompt Payment Act	Up to \$500	Up to \$750
Noncompliance with Historical Commission requirements	Up to \$500	Up to \$750
Fair Housing Violations	Up to \$100 per violation	Up to \$200 per violation
Failure to comply with Limited English Proficiency (“LEP”) policies in accordance with program rule, policy or agreement	Up to \$500	Up to \$1000
Failure to meet accessibility requirements	Up to \$1,000 per violation	Up to \$1,000 per violation

Figure 2: 10 TAC §2.302(j)

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Violations of the Uniform Physical Condition Standards	Up to \$500 for level 3 deficiencies, up to \$250 for level 2 deficiencies, up to \$125 for level 1 deficiencies	Up to \$1,000 for level 3 deficiencies, up to \$500 for level 2 deficiencies, up to \$250 for level 1 deficiencies
Noncompliance related to Affirmative Marketing requirements described in §10.617 of this title	Up to \$500	Up to \$1,000
Development is not available to the general public because of leasing issues	Up to \$750 per day per violation	Up to \$1,000 per day per violation
Owner did not allow on-site monitoring or failed to notify residents resulting in inspection cancellation	Up to \$1,000 per day	Up to \$1,000 per day
Failure to timely enter into Land Use Restriction Agreement (LURA)	Up to \$1,000 per day	Up to \$1,000 per day

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Project failed to meet minimum set aside	Up to \$1,000 per day	Up to \$1,000 per day
No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA	Up to \$10 per day per violation	Up to \$20 per day per violation
Development failed to meet additional state required rent and occupancy restrictions	Up to \$250 per day per violation	Up to \$500 per day per violation
Noncompliance with social service requirements	Up to \$500 per violation	Up to \$750 per violation
Development failed to provide housing to the elderly as promised at application	Up to \$5 per day per violation	Up to \$10 per day per violation
Failure to provide special needs housing as required by LURA	Up to \$1,000	Up to \$1,000
Changes in Eligible Basis or Applicable percentage in violation of the IRS 8823 Audit Guide or other IRS guidance	Up to \$1,000 per day per violation	Up to \$1,000 per day per violation
Failure to submit all or parts of the Annual Owner's Compliance Report	Up to \$1,000	Up to \$1,000
Failure to timely submit quarterly reports as required by §10.607 of this title	Up to \$100 for first violation	Up to an additional \$500 for each subsequent quarter the report is not submitted
Noncompliance with utility allowance requirements described in §10.614 of this title and/or Treasury Regulation §1.42-10	Up to \$50 per unit per day	Up to \$100 per unit per day
Noncompliance with lease requirements described in §10.613 of this title	Up to \$500	Up to \$1,000
Development has failed to establish and maintain a reserve account in accordance with §10.404 of this title	Up to \$1,000	Up to \$1,000
Failure to provide a notary public as promised at application	Up to \$500	Up to \$750
Violation of the Unit Vacancy Rule	Up to \$250 per violation	Up to \$500 per violation
Failure to provide pre-onsite documentation	Up to \$250	Up to \$500

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Failure to provide amenity as required by LURA	Up to \$750 per violation	Up to \$1,000 per violation
Failure to pay asset management, compliance monitoring or other required fee	Up to \$250 for the first day plus \$10 per day for each subsequent day the violation continues	Up to \$500 for the first day plus \$50 per day for each subsequent day the violation continues
Change in ownership without department approval (other than removal of a general partner in accordance with §10.406 of this title)	Up to \$1,000 for the first day plus \$100 per day for each subsequent day the violation continues	Up to \$1,000 for the first day plus \$200 per day for each subsequent day the violation continues
Failure to timely provide fair housing disclosure notice	Up to \$100 per violation	Up to \$200 per violation
Noncompliance with tenant selection requirements described in §10.610 of this title	Up to \$500 per violation	Up to \$1,000 per violation
Program Unit not leased to Low-Income household	Up to \$1,000 per violation	Up to \$1,000 per violation
Program unit occupied by nonqualified full-time students	Up to \$1,000 per violation	Up to \$1,000 per violation
Low-Income units used on a transient basis	Up to \$500 per violation	Up to \$1,000 per violation
Violation of the Available Unit Rule	Up to \$500 per violation	Up to \$1,000 per violation
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	Up to \$50 per unit per day	Up to \$150 per unit per day
Failure to provide Tenant Income Certification and documentation	Up to \$250 per violation	Up to \$250 violation
Unit not available for rent	Up to \$1,000 per unit per violation	Up to \$1,000 per unit per violation
Failure to collect data required by §10.608(b)(1) and/or (2) of this title	Up to \$50 per violation	Up to \$100 per violation
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	Up to \$1,000 per violation	Up to \$1,000 per violation
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	Up to \$500 per violation	Up to \$1,000 per violation

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Any other violation of Texas Government Code Chapter 2306 or rule or order adopted under Texas Government Code Chapter 2306	Up to \$1,000 per violation per day	Up to \$1,000 per violation per day
Failure to meet accessibility requirements	Up to \$1,000 per violation	Up to \$1,000 per violation

Figure 3: 10 TAC §2.302(j)

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Noncompliance related to Affirmative Marketing requirements	Up to \$500	Up to \$1,000
Noncompliance related to Affirmative Marketing requirements	Up to \$500	Up to \$1,000
Fair housing violations	Up to \$100 per violation	Up to \$200 per violation
Repeated violations of interim loan terms or timeline	Up to \$500	Up to \$1,000
Records retention violations	Up to \$100 per violation	Up to \$200 per violation
Failure to attend required training as required by program rule, policy or agreement	Up to \$100 per violation	Up to \$200 per violation
Providing assistance to households that are not income eligible	Up to \$500	Up to \$1,000
Violations of construction standards	Up to \$500	Up to \$1,000
Violations of property condition standards	Up to \$500	Up to \$1,000
Violation of Conflict of Interest Policies	Up to \$500	Up to \$1,000
Violation of program policies regarding use of funds for sectarian or religious activity	Up to \$500	Up to \$1,000
Failure to comply with Limited English Proficiency ("LEP") policies in accordance with program rule, policy or agreement	Up to \$500	Up to \$1,000

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Failure to comply with labor standards requirements in accordance with program rule, policy or agreement	Up to \$500	Up to \$1,000
Failure to comply with procurement policies as required by program rule, policy or agreement	Up to \$500	Up to \$1,000
Failure to comply with Section 3 requirements in accordance with program rule, policy or agreement	Up to \$500	Up to \$1,000
Failure to comply with displacement policies as required by program rule, policy or agreement	Up to \$500	Up to \$1,000
Failure to provide Tenant Income Certification and documentation	Up to \$250 per violation	Up to \$250 violation
Failure to collect data required by program rules, policies or agreements	Up to \$50 per violation	Up to \$100 per violation
Failure to provide reports required by program rules, policies or agreements, such as single audit certifications	Up to \$250 per violation	Up to \$1,000 per violation
Failure to provide required documentation or corrections to documentation	Up to \$50 per day	Up to \$150 per day
Failure to comply with defective mortgage loan policies per program rules, policies or agreements	Up to \$50 per violation	Up to \$100 per violation
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	Up to \$500 per violation	Up to \$1,000 per violation
For tenant-based rental programs, Household income increased above 80 percent at recertification and Owner failed to properly determine rent	Up to \$500 per violation	Up to \$1,000 per violation

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
For tenant-based rental programs, gross rent exceeds the highest rent by program rule, policy or agreement	Up to \$50 per unit per day	Up to \$150 per unit per day
Failure to return or repay funds to the Department as required by rule, policy or agreements (such as contract termination, assessed penalties, disallowed costs, overpayment, Deobligation, or recapture)	Up to \$50 per day	Up to \$150 per day
Any other violation of Texas Government Code Chapter 2306 or rule or order adopted under Texas Government Code Chapter 2306	Up to \$1,000 per violation per day	Up to \$1,000 per violation per day
Failure to meet accessibility requirements	Up to \$1,000 per violation	Up to \$1,000 per violation
Noncompliance with applicable OMB or state financial management requirements	Up to \$500	Up to \$1,000

#### **Subchapter D. Debarment from Participation in Programs Administered by the Department**

##### §2.401. General.

(a) The Committee may debar a Responsible Party, a Consultant and/or a Vendor who has exhibited past failure to comply with any condition imposed by the Department in the administration of its programs. A Responsible Party, Consultant or Vendor is subject to debarment for, but not limited to the following:

- (1) The Responsible Party has been placed on Modified Cost Reimbursement and failed to provide the Compliance Division with an acceptable plan to implement and adhere to procedures to ensure compliant operation of the program; or
- (2) The Responsible Party, Consultant or Vendor meets any of the ineligibility criteria referenced in §10.202 of this title (relating to Ineligible Applicants).
- (3) Providing fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission with regard to any documentation, certification or other representation made to the Department.

(b) Debarment of an Eligible Entity under the CSBG Act, for CSBG funds, shall not take effect until and unless proceedings to terminate Eligible Entity status have concluded and no right of appeal or review remains.

(c) The Department may debar any Responsible Party who has:

(1) Materially or repeatedly violated any condition imposed by the Department in connection with the administration of a Department program, including a material or repeated violation of a land use restriction agreement (LURA) regarding a development supported with a housing tax credit allocation; or

(2) Is debarred from participation in any program administered by the United States Government.

(d) Material violations of a LURA. In general LURAs entered into between Responsible parties and the Department require owners to maintain property in a manner that is suitable for occupancy and in accordance with State and Federal regulations. To determine compliance with this requirement, in accordance with Treasury Regulations, the Department uses the Uniform Physical Condition Standards protocol. A person will be considered to have materially violated a Land Use Restriction Agreement if they control a Development that has, on more than one occasion scored 50 or less on a UPCS inspection, transfers a Development without regard for a Right of First Refusal requirement, refused to allow a monitoring visit, or refuses to reduce rents to less than the highest allowed under the LURA.

(e) Repeated Violations of a LURA that shall be considered grounds for Debarment. A person shall be recommended for debarment if they control a Development that during two sequential monitoring visits are found to be out of compliance with the following events of noncompliance:

(1) No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement;

(2) Development failed to meet additional state required rent and occupancy restrictions;

(3) Development failed to provide supportive services required by LURA;

(4) Development failed to provide housing to the elderly as promised at application;

(5) Utility allowance not properly calculated cited for failure to update or failure to request permission to switch methodologies or miscalculation causes overcharge of rents; or

(6) Owner failed to execute required lease provisions, including language required by §10.613 of this title (relating to Lease Requirements) or exclude prohibited language.

(f) Material or repeated violations of conditions imposed in connection with the administration of Programs administered by the Department. Single Family subrecipients, Contractors, multifamily applicants, and related parties shall be referred to the Committee for consideration for sanctions or debarment for material or repeated violations including but not limited to:

(1) Excessive loan defaults in the first 12 months of the loan agreement;

(2) Taking "choice limiting" actions prior to receiving HUD environmental clearance (24 CFR §58.22);

(3) Disallowed costs that are not repaid;

(4) Substandard construction and repeated failure to conduct required inspections;

(5) Repeatedly participating in procurement violations;

(6) Davis Bacon Act Violations including but not limited to:

(A) Failure to pay restitution (underpayment of wages). 29 CFR §5.31.

(B) Failure to pay liquidated damages (overtime violations). 29 CFR §5.8.

(C) Repeated failure to pay full prevailing wage, including fringe benefits, for all hours worked. 29 CFR §5.31.

(7) Uniform Relocation Act and §104(d) Violations including but not limited to:

(A) Repeated failure to provide the General Information Notice to tenants prior to application. 49 CFR §24.203, 24 CFR §92.353 and HUD Handbook 1378.

(B) Repeated failure to provide all required information in the General Information Notice. 49 CFR §24.203, 24 CFR §92.353 and HUD Handbook 1378.

(C) Repeated failure to provide the Notice of Eligibility and/or Notice of Non-displacement on or before the Initiation of Negotiations date. 49 CFR §24.203 and 24 CFR §92.353, Displacement.

(D) Repeated failure to provide all required information in the Notice of Eligibility and/or Notice of Non-displacement. 49 CFR §24.203 and 24 CFR §92.353.

(E) Repeated failure to provide 90 Day Notices to all "displaced" tenants and/or repeated failure to provide 30 Day Notices to all "non-displaced" tenants. 49 CFR §24.203 and 24 CFR §92.353.

(F) Repeated failure to perform and document "decent, safe and sanitary" inspections of replacement housing. 49 CFR §24.203 and 24 CFR §92.353.

(G) Failure to properly provide Uniform Relocation Act or 104(d) assistance. 49 CFR §24.203, 24 CFR §92.353 and §104(d) of the Housing & Community Development Act of 1974 - 24 CFR 42.

(8) Repeated failure to serve income eligible households;

(9) Repeated failure to provide eligible match. 24 CFR §92.220 and 24 CFR §576.201;

(10) Repeated failure to report program income. 24 CFR §570.500, 24 CFR §576.407(c) and OMB A-110 Relocated to 2 CFR Part 215 (if applicable), 10 TAC §20.9;

(11) Participating in activities leading to or giving the appearance of "Conflict of Interest". OMB A-110 Relocated to 2 CFR Part 215 (if applicable), 24 CFRs §84.42, §92.356 (if applicable) 10 TAC §20.9;

(12) Repeated material financial system deficiencies. 24 CFR §§84.21, 84.43, 85.20, 85.22, 85.36, 92.205, 92.206, 92.350, 92.505, and 92.508 (if applicable), OMB A-110 Relocated to 2 CFR Part 215 (if applicable), OMB A-87 Relocated to 2 CFR Part 225 (if applicable), OMB A-122 Relocated to 2 CFR Part 230 (if applicable), 10 TAC §20.9 and Uniform Grant Management Standards (if applicable).

(g) Material or repeated violations of conditions imposed in connection with the administration of Community Affairs Programs administered by the Department. Community Affairs subrecipients, Contractors and related parties shall be referred to the Committee for consideration for debarment for material or repeated violations including but not limited to:

(1) Instance of Fraud, Waste and/or Abuse;

(2) Commingling of funds, Misapplication of funds;

(3) Failure to timely submit a required Single Audit or other programmatic audit;

(4) Failure to provide requested documentation/item(s) for monitoring;

(5) Failure to timely respond to Report/provide required correspondence;

(6) Failure to reimburse excess cash on hand;

(7) Failure to reimburse disallowed expenditures; and/or

(8) Failure to meet Board of Director Requirements.

(h) Before any Party is recommended for debarment that Party shall be given written notice of the matter, setting forth the facts and circumstances justifying debarment. That Party shall then be offered the opportunity to attend an Informal Conference with the Committee to discuss resolution of the matter and if they have not already been provided a ninety day corrective action period.

(i) An Informal Conference may result in:

(1) An agreement to dismiss the matter with no further action, which will then be reported to the Executive Director;

(2) An agreement to resolve the matter through corrective action without debarment which will then be reported to the Executive Director;

(3) An Agreed debarment which will then be reported to the Executive Director and presented to the Board for approval. A CSBG eligible entity that enters into an Agreed debarment must also voluntarily relinquish their eligible entity status;

(4) A recommendation by the Committee to the Executive Director for debarment; or

(5) Other action as the Committee deems appropriate.

(j) The Committee's recommendation to the Executive Director regarding debarment shall include a recommended period of debarment. Recommended periods of debarment will be based on material factors such as repeated occurrences, seriousness of underlying issues, and presence or absence of corrective action, including corrective action to install new responsible persons and ensure they are qualified and properly trained. Recommended periods of debarment if based upon HUD debarment, shall be for the period of the remaining HUD debarment; or, if based upon criminal conviction, shall be up to ten (10) years or until fulfillment of all conditions of incarceration and/or probation, whichever is greater.

(k) The Executive Director shall accept, reject, or modify the debarment recommendation by the Committee and shall provide written notice to the Responsible Party of his determination, and an explanation of his determination if different than the Committee's recommendation, including the period of debarment, if any. Not later than the twentieth (20th) day after the date the Responsible Party receives the notice, the Responsible Party may appeal the debarment determination in writing to the Board.

(l) The debarment recommendation will be brought to the next Board meeting for which the matter can be properly posted. The Board reserves discretion to impose longer or shorter debarment periods than those recommended by staff based on its finding that such longer or shorter periods are appropriate when considering all factors and/or for the purposes of equity or other good cause. An action on a proposed debarment of an eligible entity under the CSBG Act will not become final until and unless proceedings to terminate eligible entity status have occurred, resulting in such termination and all rights of appeal or review have run or eligible entity status has been voluntarily relinquished.

(m) Any person who has been debarred is prohibited from participation in programs administered by the Department for the term of their debarment unless by its terms the order of debarment permits continuing activity in one or more specified programs. The Board will not consider modifying the terms of the debarment after the issuance of a final order of debarment.