

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
TDHCA Governing Board Approved Rule Action for  
10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring,  
§10.603, Notices to the Internal Revenue Service (HTC Developments during the Compliance Period),  
and §10.620, Monitoring for Non-Profit Participation, HUB, or CHDO Participation

**Disclaimer**

Attached is a proposed rule action relating to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.603, Notices to the Internal Revenue Service (HTC Developments during the Compliance Period), and §10.620, Monitoring for Non-Profit Participation, HUB, or CHDO Participation, that were approved by the TDHCA Governing Board on January 12, 2023.

Under Tex. Gov't Code §2001.039, which requires that state agencies review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist, these sections are now required to be evaluated. Staff has determined that there is a continuing need for these rules to exist and that no revisions are currently warranted. The Secretary of State requires that even when no revisions are proposed, the rule be released for a public comment period. Therefore, the rule will be made available for public comment from January 27, 2023, through February 27, 2023, and returned to the Board for final approval.

This document, including its preamble, is expected to be published in the January 27, 2023, edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment and can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

In compliance with §2001.023, Texas Government Code, a summary of the rule and action follows for each section:

§10.603, Notices to the Internal Revenue Service (HTC Developments during the Compliance Period), provides that even when an Event of Noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS, and that this notice will not be filed before the end of the correction period. The Department will indicate on IRS Form 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the noncompliance. No changes are being made to this section.

§10.620, Monitoring for Non-Profit Participation, HUB, or CHDO Participation, specifies how the Department will handle issues that may arise when a Development's LURA requires the material participation of a non-profit or Historically Underutilized Business (HUB), or in cases in which HOME funds were awarded from the Community Housing and Development Organization (CHDO) set aside. The section also provides what an Owner must do if they wish to change the participating non-profit, HUB, or CHDO. No changes are being made to this section.

## Public Comment

**Public Comment Period:** Start: 8:00 a.m. Austin local time on January 27, 2023  
End: 5:00 p.m. Austin local time on February 27, 2023

Comments received after 5:00 p.m. Austin local time on February 27, 2023, will not be accepted.

Written comments may be submitted, in hard copy or electronic formats within the designated public comment period to:

Texas Department of Housing and Community Affairs  
**Email: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us)**

Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

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

### **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

Street Address: 221 East 11th Street, Austin, TX 78701  
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## DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS

Acción de regla aprobada por la Junta Directiva del TDHCA para la sección (§) 10.603 [“Notificaciones al Servicio de Impuestos Internos (cambios del crédito tributario para viviendas (HTC) durante el periodo de cumplimiento)”] y la sección (§) 10.620 [“Supervisión de la participación de empresas sin fines de lucro, de la participación de empresas históricamente infrutilizadas (HUB) o de la participación de organizaciones de vivienda y desarrollo comunitarios (CHDO)”] del subcapítulo F [“Supervisión de cumplimiento”] del capítulo 10 [“Reglas para viviendas multifamiliares uniformes”] del título 10 del Código Administrativo de Texas (TAC)

**Descargo de responsabilidad**

Se adjunta una acción propuesta de regla referente a la sección (§) 10.603 [“Notificaciones al Servicio de Impuestos Internos (cambios del crédito tributario para viviendas (HTC) durante el periodo de cumplimiento)”] y la sección (§) 10.620 [“Supervisión de la participación de empresas sin fines de lucro, de la participación de empresas históricamente infrutilizadas (HUB) o de la participación de organizaciones de vivienda y desarrollo comunitarios (CHDO)”] del subcapítulo F [“Supervisión de cumplimiento”] del capítulo 10 [“Reglas para viviendas multifamiliares uniformes”] del título 10 del Código Administrativo de Texas (TAC), que fueron aprobadas por la Junta Directiva del TDHCA el 12 de enero de 2023.

En virtud de la sección (§) 2001.039 del Código de Gobierno de Texas, que exige que las agencias estatales revisen una regla cada cuatro años para evaluar si continúan existiendo las razones para adoptar inicialmente la regla, ahora se exige que se evalúen estas secciones. El personal ha determinado que existe una necesidad continua de la existencia de estas reglas y que actualmente no se justifican revisiones. La Secretaría de Estado exige que la regla se publique para un período de comentarios públicos, incluso cuando no se propongan revisiones. Por lo tanto, la regla estará disponible para comentarios públicos desde el 27 de enero de 2023 hasta el 27 de febrero de 2023, y se remitirá a la Junta para su aprobación final.

Se espera que este documento, incluyendo su preámbulo, se publique en la edición del *Texas Register* del 27 de enero de 2023. Esa versión publicada constituirá la versión oficial para fines de comentarios públicos y se puede encontrar en el siguiente enlace: <https://www.sos.texas.gov/texreg/index.shtml>.

De conformidad con la sección (§) 2001.023 del Código de Gobierno de Texas, se incluye a continuación un resumen de la regla y la acción correspondiente para cada sección:

La sección (§) 10.603 [“Notificaciones al Servicio de Impuestos Internos (cambios del crédito tributario para viviendas (HTC) durante el periodo de cumplimiento)”] establece que incluso cuando se corrige un caso de incumplimiento, el Departamento debe presentar el formulario 8823 del IRS ante el IRS, y que esta notificación no se presentará antes de la finalización del período de correcciones. El Departamento señalará en el formulario 8823 del IRS la naturaleza del incumplimiento, así como si el propietario de la urbanización ha corregido el incumplimiento. No se están efectuando cambios en esta sección.

La sección (§) 10.620 [“Supervisión de la participación de empresas sin fines de lucro, de la participación de empresas históricamente infrutilizadas (HUB) o de la participación de organizaciones de vivienda y desarrollo comunitarios (CHDO)”] especifica cómo el Departamento gestionará los problemas que puedan surgir cuando el acuerdo de restricciones de planificación urbana (LURA) de una urbanización exija la participación material de una empresa sin fines de lucro o de una empresa históricamente subutilizada (HUB), o bien en casos en los que se reservaron fondos HOME adjudicados de la organización de vivienda y desarrollo comunitarios (CHDO). La sección también dispone lo que un propietario debe hacer si desea cambiar la empresa sin fines de lucro, la HUB o la CHDO. No se están efectuando cambios en esta sección.

## Comentarios del público

**Periodo de comentarios del público:** Inicio: 8:00 a. m., hora local de Austin, del 27 de enero de 2023  
Fin: 5:00 p. m., hora local de Austin, del 27 de febrero de 2023

No se aceptarán los comentarios que se reciban después de las 5:00 p. m., hora local de Austin, del 27 de febrero de 2023.

Los comentarios por escrito pueden presentarse en formato impreso, por fax o por correo electrónico dentro del período designado de comentarios del público así:

Departamento de Vivienda y Asuntos Comunitarios de Texas

**Correo electrónico: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us)**

Se anima a quienes formulen comentarios públicos a que hagan referencia al borrador de la norma, 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**

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**Attachment 1: Notice of Proposed Rule Review for 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.603, Notices to the Internal Revenue Service (HTC Developments during the Compliance Period)**

The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.603, Notices to the Internal Revenue Service (HTC Developments during the Compliance Period). The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to have a rule in effect that provides how and when notice to the Internal Revenue Service on IRS Form 8823 will occur. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for re-adoption will be noted in the Texas Register's Review of Agency Rules section without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from January 27, 2023, through February 27, 2023. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, or by email to [bboston@tdhca.state.tx.us](mailto:bboston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, February 27, 2023.

**Attachment 2: Notice of Proposed Rule Review for 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.620, Monitoring for Non-Profit Participation, HUB, or CHDO Participation**

The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.620, Monitoring for Non-Profit Participation, HUB, or CHDO Participation. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is have rules in effect that provide notice and clarity around the monitoring process used for non-profit, Historically Underutilized Businesses (HUB) and Community Housing Development Organizations (CHDOs). The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for readoption will be noted in the Texas Register's Review of Agency Rules section without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from January 27, 2023, through February 27, 2023. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, or by email to [bboston@tdhca.state.tx.us](mailto:bboston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, February 27, 2023.

**Attachment 3: Text of Rules as Currently in Effect for 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.603, Notices to the Internal Revenue Service (HTC Developments during the Compliance Period), and §10.620, Monitoring for Non-Profit Participation, HUB, or CHDO Participation**

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

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

(b) The Department will retain records of noncompliance or failure to certify for six years beyond the Department's filing of the respective IRS Form 8823.

(c) The Department will send the Owner of record copies of any IRS Forms 8823 submitted to the IRS.

**§10.620, Monitoring for Non-Profit Participation, HUB, or CHDO Participation**

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

(b) If the HOME funds were awarded from the Community Housing and Development Organization (CHDO) set aside on or after August 23, 2013, the Department will monitor that the Development remains controlled by a CHDO throughout the federal affordability period.

(c) If an Owner wishes to change the participating non-profit, HUB, or CHDO, prior written approval from the Department is necessary. In addition, the IRS will be notified if the non-profit is not materially participating on an HTC Development during the Compliance Period.

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