

Attachment A: Preamble, including required analysis, for proposed amendments to 10 TAC Chapter 2, Enforcement, Subchapter A General, Subchapter C Administrative Penalties, and Subchapter D, Debarment from Participation in Programs Administered by the Department

The Texas Department of Housing and Community Affairs (the Department) proposes amending 10 TAC Chapter 2, Enforcement, Subchapter A General, Subchapter C Administrative Penalties, and Subchapter D, Debarment from Participation in Programs Administered by the Department. The amendments will add reference to a new inspection protocol, NSPIRE, and brings this rule into consistency with changes recently made to Chapter 1, Subchapter C, relating to previous participation reviews and the removal of references to the now defunct Executive Award Review and Advisory Committee (EARAC).

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, the enforcement of the Department's program rules.
2. The amendment to the rule will not require a change in the number of employees of the Department;
3. The amendment to the rule will not require additional future legislative appropriations;
4. The amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The amendment to the rule will not create a new regulation, but provides clarification to an existing regulation;
6. The amendment to the rule will not repeal an existing regulation;
7. The amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The 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 adding a new federally required inspection standard and bringing the rule into consistency with other Department rules. 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 December 22, 2023, through January 22, 2024. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, P.O. Box 13941, Austin, Texas 78711-3941, or by email to brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local (Central) time, January 22, 2024.

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.

SUBCHAPTER A GENERAL

§2.101 Policy and Purpose

This chapter sets forth the enforcement mechanisms that the Department may use to bring about compliant administration of Department funded programs, state or federal, and exclude or remove from Department programs, Persons who have established, through certain noncompliant behavior that they are either unwilling to act in a compliant manner, or are unable to do so. These enforcement mechanisms are in addition to any available contractual remedies under program agreements.

§2.102 Definitions

The words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific chapters of this title that govern the program associated with the request, in Chapter 1 of this title (relating to Administration), or assigned by federal or state law.

(1) **Actively Monitored Development**--A Development that within the last three years has been monitored by the Department, either through a Uniform Physical Condition Standards (UPCS) inspection, a National Standards for the Physical Inspection of Real Estate (NSPIRE) inspection, an onsite or desk file monitoring review, an Affirmative Marketing Plan review, or a Written Policies and Procedures Review. UPCS and NSPIRE inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

(2) **Consultant**--A Person who provides services or advice for a fee in a capacity other than as an employee and does not have Control.

(3) **Control (including the terms Controlled and Controlling)**--"Control" is defined in §11.1 of this title (relating to General) or as identified in the specific Program rule.

(4) **Debarment**--A prohibition from future participation in some or all Programs administered by the

Department. Except as otherwise stated in the Order, Debarment does not impact existing or ongoing participation in Department Programs, prior to the date of the Debarment, nor does it affect any continuing responsibilities or duties thereunder.

(5) Enforcement Committee (~~"(Committee)"~~)--A Committee of employees of the Department appointed by the Executive Director. ~~The voting members of that Committee shall be no fewer than five and no more than nine. Additionally, each voting member shall have an alternate member, also appointed by the Executive Director, in the event that the primary voting member is unavailable.~~ The Committee may be composed of any member of any Department division, but members from the referring division may not be present during deliberations. ~~Alternate members may serve on behalf of any voting member for purposes of assuring a quorum.~~ The Legal Division will designate person(s) to attend meetings and advise the Committee. A Legal Division designee will serve as Secretary to the Committee.

(6) Event of Noncompliance (including the alternate term ~~"Finding of Noncompliance"~~)--Any event for which a Person may be found to be in noncompliance with Texas Government Code Chapters 2105 or 2306, any rule adopted thereunder, any Program Agreement requirement, or federal program requirements.

(7) Legal Requirements--All requirements, as it relates to the particular Department Program, of state, federal, or local statutes, rules, regulations, ordinances, orders, court opinions, official interpretations, policy issuances, OMB Circulars, representations to secure awards, or any similar memorialization of requirement, including contract requirements.

(8) Monitoring Event--An onsite or desk monitoring review, a ~~Uniform Physical Condition Standards~~UPCS inspection, a NSPIRE inspection, the submission of the Annual Owner's Compliance Report, Final Construction Inspection, a Written Policies and Procedures Review, or any other instance when the Department's Compliance Division or other reviewing area provides written notice to an Owner or Contact Person requesting a response by a certain date. This would include, but not be limited to, responding to a tenant complaint.

(9) Person--A legal entity including, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability corporation, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including individual members of the group.

(10) Program--Includes any activity performed by a Subrecipient, Administrator, Contractor, Development Owner, or other Person under a Program Agreement or activities performed by a third party under a Program Agreement, including but not limited to a Subgrantee or Subcontractor.

(11) 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 Legal Requirements.

(12) Responsible Party--Any Person subject to a Program Agreement.

(13) 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 Events 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 Legal Requirements.

(c) Recordkeeping. Each referring division will keep records in accordance with the Department's record retention schedule and any other state or Federal requirements of all Events of Noncompliance.

(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 Events 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.

(e) For each Event of Noncompliance, the Department will evaluate which Person or Persons had Control of the Development, Program, or activity at the time the Event of Noncompliance occurred. A Person will not be referred for Debarment or assessed a Administrative Penalty because they have newly acquired a Development that has existing Events of Noncompliance, provided that the findings are resolved by transferee within a reasonable timeframe after purchase, in accordance with a plan that is approved by the Department in an ownership transfer request under §10.406 of this title (relating to Ownership Transfers (§2306.6713)). Sale or foreclosure of a property does not preclude Debarment consideration against the Person or Persons who had Control of the Development, Program, or activity at the time an Event of Noncompliance occurred.

§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. 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 Event of Noncompliance is required to be reported to the Internal Revenue Service, (IRS) it will be reported by the Compliance Division on form 8823. For federally funded Programs or activities, the Department may recommend that a federal funding agency initiate a debarment proceeding under

2 CFR Part 180 or 2 CFR 2424, as applicable. Program Agreements may also include additional enforcement mechanisms, federal reporting, or penalties.

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

(1) Enforcement of contractual provisions in the Program Agreements including, but not limited to, options to place a Development into receivership, and rights of suspension or termination, and placement on a cost reimbursement status as described in Subchapter B of this chapter (relating to Enforcement for Noncompliance with Program Requirements of Chapters 6 and 7);

(2) Consideration of a reasonable plan for correction, warning letter, informal conference, and assessment of administrative penalties, as further 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 from Participation in Programs Administered by the Department).

SUBCHAPTER C ADMINISTRATIVE PENALTIES

§2.301 General

Department divisions will recommend to the Committee the initiation of proceedings to assess administrative penalties where the Responsible Party or Parties have violated Chapters 2105 or 2306 of the Texas Government Code or a rule or order adopted under Chapters 2105 or 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, staff from any Department Divisions 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. All correspondence shall be delivered electronically.

§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) ~~This~~The referring division will recommend the initiation of administrative penalty proceedings to the Committee by referral to the secretary of the Committee ~~("Secretary")~~. At the time of referral for a multifamily rental Development, the referral letter from the referring Division will require the Responsible Party who Controls the Development to provide a listing of the Actively Monitored Developments in their portfolio. The Secretary will use this information to help determine whether mandatory Debarment should be simultaneously considered by the Enforcement Committee in accordance with §2.401(e)(2) of this section, related to repeated violations.

(c) The Secretary shall promptly contact the Responsible Party. If fully acceptable corrective action documentation is submitted to the referring division before the ~~("Secretary")~~ sends an informal

conference notice, the referral shall be closed with no further action provided that the Responsible Party is not subject to consideration for Debarment and provided that the referring division does not wish to move forward with the referral based upon a pattern of repeated violations. If the Secretary is not able to facilitate resolution, but receives a reasonable plan for correction, such plan shall be reported to the Committee to determine whether to schedule an informal conference, modify the plan, or accept the plan. If accepted, plan progress shall be regularly reported to the Committee, but an informal conference will not be held unless the approved plan is substantively violated, or an informal conference is later requested by the Committee or the Responsible Party. Plan examples include but are not limited to: a rehabilitation plan with a scope of work or contracts already in place, plans approved by ~~EARAC as part of the Department as part of the~~ Previous Participation Review process provided for in 10 TAC Subchapter C for an ownership transfer or funding application, plans approved by the Executive Director, plans approved by the Asset Management Division, and/or plans relating to newly transferred Developments with unresolved Events of Noncompliance originating under prior ownership. Should the Secretary and Responsible Party fail to come to, an agreement or closer of the referral, or if the Responsible Party or ownership group's prior history of administrative penalty referrals does not support closure, or if consideration of Debarment is appropriate, the Secretary will schedule an informal conference with the Responsible Party to attempt to reach an agreed resolution.

(d) When an informal conference is scheduled, a deadline for submitting Corrective Action documentation will be included, providing a final opportunity for resolution. If compliance is achieved at this stage, the referral will be closed with a warning letter provided that factors, as discussed below, do not preclude such closure. Closure with a warning letter shall be reported to the Committee. Factors that will determine whether it is appropriate to close with a warning letter include, but are not limited to:

- (1) Prior Enforcement Committee history relating to the Development or other properties in the ownership group;
- (2) Prior Enforcement Committee history regarding similar federal or state Programs;
- (3) Whether the deadline set by the Secretary in the informal conference notice has been met;
- (4) Whether the Committee has set any exceptions for certain finding types; and
- (5) Any other factor that may be relevant to the situation.

(e) If an informal conference is held:

- (1) Notwithstanding the Responsible Party's attendance or presence of an authorized representative, the Enforcement Committee may proceed with the informal conference;
- (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;

(4) Assessment of an administrative penalty and Debarment may be considered at the same informal conference; and

(5) In order to facilitate candid dialogue, an informal conference 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.

(f) An informal conference may result in the following, which shall be reported to the Executive Director:

(1) An agreement to dismiss the matter with no further action;

(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 notice with regard to possible future penalty assessment;

(3) An agreement to resolve the matter through corrective action without penalty. If the agreement is to be included in an order, a proposed agreed order will be prepared and presented to the Board for approval;

(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 requirements to obtain training. In this circumstance, a proposed agreed order will be prepared and presented to Department's Governing Board for approval;

(5) A recommendation by the Committee to the Executive Director to determine that a violation occurred, and to issue a report to the Board and a Notice of Violation to the Responsible Party, seeking the assessment of administrative penalties through a contested case hearing with the State Office of Administrative Hearings (~~"(SOAH)";~~); or

(6) Other action as the Committee deems appropriate.

(g) Upon receipt of a recommendation from the Committee regarding the issuance of a report and assessment of an administrative penalty under subsection (f)(5), 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.

(h) 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 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 the statutory factors at Tex. Gov't Code §2306.042 the penalty schedule shown in the tables in subsection (k) of this section and in the instance of a proceeding to assess administrative penalties against a Responsible Party administering the annual block grant portion of CDBG, CSBG, or LIHEAP, whether the assessment of such penalty will interfere with the uninterrupted delivery of services under such program(s). The Executive Director 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.

(i) Not later than 20 days after the Responsible Party receives the Notice of Violation, the Responsible Party may accept the requirements of the Notice of Violation or request a SOAH 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 §1.13 of this title (relating to Contested Case Hearing Procedures), which outlines the remainder of the process.

(k) Penalty schedules.

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Figure 1: 10 TAC §2.302(k)

Penalty table for Chapters 6 and 7 Findings of Noncompliance These are the maximum potential administrative penalty amounts possible for each finding of noncompliance. When an administrative penalty is to be considered, the matrix below must be considered in conjunction with the statutory factors at Tex. Gov't Code §2306.042.		
Finding of Noncompliance	Maximum first time administrative penalty assessment	Maximum Administrative penalty assessment for a Responsible Party that has previously paid a penalty for the same finding type

Lack of financial duties or material inventory segregation of duties	Up to \$500	Up to \$1,000
No Cost Allocation/Not allocating costs properly	Up to \$500 for each instance	Up to \$1,000 for each instance
Violation of Conflict of Interest policies	Up to \$500	Up to \$1,000
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 Contract Term)	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 properly procured	Up to \$1,000 for each service or product not properly 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

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 Tri-Partite Board Requirements	Up to \$1,000 + up to \$100 for each the entity failed to comply	Up to \$1,000 + up to \$250 for each day the entity failed to com
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
Failure to complete or to properly complete required program documents	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 Ending Homelessness, HHSP, or ESG 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
Failure to comply with case management requirements	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 \$75
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
Failure to submit Inventory Report within 45 days (end of contract term)	Up to \$500	Up to \$1,000
Failure to timely enter into an ISPA (Information Privacy and Security Agreement)	Up to \$1,000 per violation	Up to \$1,000 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
Failure to comply with Section 3 requirements in 24 CFR Part 75 in accordance with program rule, policy, or agreement (ESG only)	Up to \$500	Up to \$1,000

Figure 2: 10 TAC §2.302(k)

Penalty table for Multifamily Rental Findings of Noncompliance. These are the maximum potential administrative penalty amounts possible for each finding of noncompliance. When an administrative penalty is to be considered, the matrix below must be considered in conjunction with the statutory factors at Tex. Gov't Code §2306.042:		
Finding of Noncompliance	Maximum First Time Administrative Penalty assessment	Maximum Administrative Penalty Assessment for a Responsible Party that has previously paid a penalty for the same finding type
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, plus an optional \$100 per day if for each level 2 or level 3 deficiencies remain <u>deficiency that remains</u> uncorrected 6 months from the corrective action deadline-	Up to \$1,000 for level 3 deficiencies, up to \$500 for level 2 deficiencies, up to \$250 for level 1 deficiencies, plus an optional \$200 per day if for each level 2 or level 3 deficiencies remain <u>deficiency that remains</u> uncorrected 6 months from the corrective action deadline-
<u>Violations of National Standards for Physical Inspections of Real Estate</u>	<u>Up to \$500 for life threatening and severe deficiencies, up to \$250 for moderate deficiencies, up to \$125 for low deficiencies, plus an optional \$100 per day for each life threatening or severe deficiency that remains uncorrected 6 months from the corrective action deadline</u>	<u>Up to \$1,000 for life threatening and severe deficiencies, up to \$500 for moderate deficiencies, up to \$250 for low deficiencies, plus an optional \$200 per day for each life threatening or severe deficiency that remains uncorrected 6 months from the corrective action deadline</u>

Noncompliance related to Affirmative Marketing requirements described in §10.801 of this title.	Up to \$250	Up to \$500;
TDHCA has received notice from HUD, the DOJ, the TWC, or another party of a judgement from a court of competent jurisdiction regarding a Fair Housing Violation and/or reported general public use violations- unless such violation has already been disclosed in the Annual Owner's Compliance Report.	Up to \$1,000	Up to \$1,000
TDHCA has referred unresolved Fair Housing design and construction issues to the Texas workforce <u>Workforce</u> Commission Civil Rights division	Up to \$1,000	Up to \$1,000
Development is not available to the general public because of leasing issues	Up to \$1,000 per day per violation	Up to \$1,000 per day per violation
Development is never expected to comply due to failure to report or allow monitoring	Up to \$1,000 per day	Up to \$1,000 per day
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

(including failure to appear for review)		
LURA not in effect	Up to \$1,000 per day	Up to \$1,000 per day
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 and/or ownership by a non-profit or HUB, if required by LURA	Up to \$750	Up to \$1,000
Development failed to meet additional state required rent and occupancy restrictions	Up to \$250 per day per violation	Up to \$500 per day per viola
Noncompliance with social service requirements (provision of services)	Up to \$250 per violation, with each required service considered a separate violation	Up to \$500 per violation, with each required service considered a separate violation
Noncompliance with social service requirements (expenditure amounts)	Double the monthly expenditure deficiency, up to a maximum of \$1,000 per day	Triple the monthly expenditure deficiency, up to a maximum of \$1,000 per day.
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	Up to \$500	Up to \$1,000

Owner's Compliance Report		
Failure to respond to Compliance Division requests for clarification regarding answers on the Annual Owner's Compliance Report	Up to \$250	Up to \$750
Failure to submit quarterly reports as required by §10.607 of this title	Up to \$100, then and additional \$250 for each subsequent quarter that the report is not received	Up to \$250, then an additional \$500 for each subsequent quarter that the report is not submitted
Noncompliance with utility allowance requirements described in §10.614 of this title and/or Treasury Regulation 26 CFR §1.42-10	Up to \$50 per unit	Up to \$100 per unit
Noncompliance with lease requirements described in §10.613 of this title (relating to failure to execute required lease provisions)	Up to \$500	Up to \$1,000
Noncompliance with lease requirements described in §10.613 of this title (relating to failure to provide lease brochures, guides or notices described in §10.613 currently including but not limited to the Tenant Rights and Resources Guide)	Up to \$250	Up to \$500
Asset Management has reported that Development has	Up to \$1,000	Up to \$1,000

failed to establish and maintain a reserve account in accordance with §10.404 of this title		
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 per pre-onsite documentation item	Up to \$500 per pre-onsite documentation item
Failure to provide amenity as required by LURA	Up to \$1,000 per violation	Up to \$1,000 per violation, plus \$100 for each subsequent day the violation continues
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
Noncompliance with written policy and procedure requirements described in §10.802 of this title (written policy violations)	Up to \$500 per violation	Up to \$1,000 per violation
Noncompliance with written policy and procedure requirements described in §10.802	Up to \$250 per violation	Up to \$500 per violation

of this title (notice of termination language requirements)		
Noncompliance with Reasonable Accommodation Policy requirements as described in §10.802 of this title	Up to \$500 per violation	Up to \$1,000 per violation
Program Unit not leased to Low-Income household (either because the household's income exceeds the allowable limit or because the owner did not gather adequate documentation to establish household eligibility)	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 \$100 per violation	Up to \$250 per violation
Unit not available for rent	Up to \$50 per unit per day	Up to \$100 per unit per day
Failure to collect data required by §10.612(b)(1) and/or (2) of this title (Annual Eligibility Certifications)	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
Violation of the Integrated Housing Rule in 10 TAC 1.15	Up to \$500	Up to \$500
Failure to resolve final construction deficiencies within corrective action period	Up to \$1,000 per violation	Up to \$1,000 per violation
Noncompliance with the required accessibility requirements such as §504 of the Rehabilitation Act of 1973, the 2010 ADA standards or other accessibility related requirements of a Department Rule, including but not limited to those described in Chapter 1, Subchapter B (except those only under the Fair Housing Act for which there is a separate category)	Up to \$1,000 per violation-, <u>plus an optional \$100 per day for each accessibility deficiency that remains uncorrected 6 months from the corrective action deadline</u>	Up to \$1,000 per violation-, <u>plus an optional \$100 per day for each accessibility deficiency that remains uncorrected 6 months from the corrective action deadline</u>
Noncompliance with the notice to the Department requirements described in §10.609 of this title	Up to \$500	Up to \$500

Failure to provide a reasonable accommodation under 10 TAC, Chapter 1, Subchapter B	Up to \$1,000 per violation	Up to \$1,000 per violation
Violation of the Fair Housing Act and §1.205 of this Title	Up to \$1,000	Up to \$1,000
Failure to reserve units for Section 811 participants (Section 811 PRA only)	Up to \$750 <u>per violation</u>	Up to \$1,000 <u>per violation</u>
Failure to notify the Department of the availability of Section 811 units (Section 811 PRA only)	Up to \$750 <u>per violation</u>	Up to \$1,000 <u>per violation</u>
Owner failed to check criminal history and drug use of household (as required by Department Rule)	Up to \$250	Up to \$500
Failure to use Enterprise Income Verification System (section 811 PRA only)	Up to \$250	Up to \$500
Failure to properly document and calculate adjusted income (section 811 PRA only)	Up to \$500 per violation	Up to \$1,000 per violation
Failure to use required HUD forms (Section 811 PRA only)	Up to \$250	Up to \$500
Accepted funding that limits 811 PRA participation	Up to \$1,000	Up to \$1,000
Failure to properly calculate resident portion of rent (Section 811 PRA <u>and HOME ARP Qualified Population Units</u> only)	Up to \$50 per unit per day	Up to \$150 per unit per day

Failure to use HUD model Lease (Section 811 PRA only)	Up to \$500	Up to \$1,000
Failure to disperse 811 PRA Units according to program requirements (relates to disbursement throughout the Development. Section 811 PRA only)	Up to \$500	Up to \$1,000
Failure to conduct interim certifications (Section 811 PRA only)	Up to \$100 per violation	Up to \$250 per violation
Failure to conduct annual income recertification (Section 811 PRA only)	Up to \$100 per violation	Up to \$250 per violation
Asset Management Division has reported that Development has failed to submit rents for review on an annual basis in accordance with §10.403 of this Title	Up to \$750	Up to \$1,000
Failure to maintain status as a qualified Community Housing Development Organization (CHDO)	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 submit Audit Certification Form, a Single Audit, or other programmatic audit	Up to \$1,000	Up to \$1,000 plus up to \$100 for each day not in compliance
Failure to timely enter into an Information Privacy and Security Agreement	Up to \$1,000 per violation	Up to \$1,000 per violation
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 displacement policies as required by program rule, policy or agreement	Up to \$500	Up to \$1,000
Casualty loss not corrected during restoration period	Up to \$100 per unit per day	Up to \$500 per unit per day
Unit leased to Household that is not qualified for the Section 811 PRA program	Up to \$500	Up to \$1,000
Failure to submit documentation for mail in review	Up to \$1,000 per day	Up to \$1,000 per day
Noncompliance with CHDO requirements	Up to \$500	Up to \$1,000
Failure to properly calculate security deposit (Section 811 PRA only)	Up to \$250 <u>\$1,000</u>	Up to \$500 <u>\$1,000</u>
Failure to prominently display required Fair Housing Posters (Section 811 PRA only)	Up to \$250	Up to \$500
Failure to comply with Section 3 requirements in 24 CFR 135.34 and 24 CFR 135.5 in <u>Part 75</u> in accordance with program rule, policy, or agreement	Up to \$500	Up to \$1,000

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Figure 3: 10 TAC §2.302(k)

Penalty table for Single Family Program Findings of Noncompliance. These are the maximum potential administrative penalty amounts possible for each finding of noncompliance. When an administrative penalty is to be considered, this matrix must be considered in conjunction with the statutory factors at Tex. Gov't Code §2306.042.

Finding of Noncompliance	Maximum first time administrative penalty assessment	Maximum administrative penalty assessment for a Responsible Party that has previously paid a penalty for the same finding type
Noncompliance related to Affirmative Marketing requirements	Up to \$500	Up to \$1,000
Program Accessibility violations	Up to \$100 per violation	Up to \$200 per violation
Failure to meet CHDO Board 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
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	Up to \$500	Up to \$1,000

sectarian or religious activity		
Failure to comply with Limited English Proficiency ("LEP") policies in accordance with program rule, policy or agreement	Up to \$500	Up to \$1,000
Failure to comply with labor standards requirements in accordance with program rule, policy or agreement	Up to \$500	Up to \$1,000
Violation of Procurement Requirements	Up to \$1,000 for each service or product not properly procured	Up to \$1,000 for each service or product not properly procured
Failure to comply with Section 3 requirements in 24 CFR Part 75 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 required documentation or	Up to \$50 per day	Up to \$150 per day

corrections to documentation		
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
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
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

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
Failure to timely enter into an ISPA (Information Privacy and Security Agreement)	Up to \$1,000 per violation	Up to \$1,000 per Violation
Lack of insurance of 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

SUBCHAPTER D DEBARMENT FROM PARTICIPATION IN PROGRAMS ADMINISTERED BY THE DEPARTMENT

§2.401 General

(a) The Department 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 may be referred to the Committee for Debarment for any of the following:

- (1) Refusing to provide an acceptable plan to implement and adhere to procedures to ensure compliant operation of the program after being placed on Modified Cost Reimbursement;
- (2) Refusing to repay disallowed costs;
- (3) Refusing to enter into a plan to repay disallowed costs or egregious violations of an agreed repayment plan;
- (4) Meeting any of the ineligibility criteria referenced in §11.202 of this title (relating to Ineligible Applicants and Applications) or other ineligibility criteria outlined in a Program Rule, with the exception of: ineligibility related to conflicts of interest disclosed to the Department for review, and ineligibility identified in a previous participation review in conjunction with an application for funds or resources (unless otherwise eligible for Debarment under this Subchapter D);

(5) 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;

(6) Failing to correct Events of Noncompliance as required by an order that became effective after ~~the effective date of this rule~~April 1, 2021, and/or failing to pay an administrative penalty as required by such order, within six months of a demand being issued by the Department. In this circumstance, if the Debarment process is initiated but the Responsible Party fully corrects the findings of noncompliance to the satisfaction of the referring division and pays the administrative penalty as required by the order before the Debarment is finalized by the Board, the Debarment recommendation may be cancelled or withdrawn by Committee recommendation and Executive Director concurrence. This type of referral would be initiated by the Secretary;

(7) Controlling a multifamily Development that was foreclosed after ~~the effective date of this rule~~April 1, 2021, where the foreclosure or deed in lieu of foreclosure terminates a subordinate TDHCA LURA;

(8) Controlling a multifamily Development and allowing a change in ownership after ~~the effective date of this rule~~April 1, 2021, without Department approval;

(9) Transferring a Development, after ~~the effective date of this rule~~April 1, 2021, without regard for a Right of First Refusal requirement;

(10) Being involuntary removed, or replaced due to a default by the General Partner under the Limited Partnership Agreement, after April 1, 2021;

(11) Controlling a multifamily Development and failing to correct Events of Noncompliance before the expiration of a Land Use Restriction Agreement, after the effective date of this rule;

(11) Refusing to comply with conditions approved by the Board that were recommended by the Executive Award Review Advisory Committee after ~~the effective date of this rule~~April 1, 2021;

(12) Having any Event of Noncompliance that ~~occu~~occurs after ~~the effective date of this rule~~April 1, 2021, that causes the Department to be required to repay federal funds to any federal agency including, but not limited to the U.S. Department of Housing and Urban Development; and/or

(13) Submitting a written certification that non-compliance has been corrected when it is determined that the Event of Noncompliance was not corrected. For certain Events of Noncompliance, in lieu of documentation, the Compliance Division accepts a written certification that noncompliance has been corrected. If it is determined that the Event of Noncompliance was not corrected, a Person who signed the certification may be recommended for debarment;

(14) Refusing to provide an amenity required by the LURA after ~~the effective date of this rule~~April 1, 2021;

(15) Failing to reserve units for Section 811 PRA participants after ~~the effective date of this rule~~April

1, 2021;

(16) Failing to notify the Department of the availability of 811 PRA units after ~~the effective date of this rule;~~April 1, 2021;

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

(18) Substandard construction, as defined by the Program, and repeated failure to conduct required inspections;

(19) Repeated failure to provide eligible match. 24 CFR §92.220, 24 CFR §576.201, and as required by NOFA;

(20) Repeated failure to report program income. 24 CFR ~~§200.80~~, 24 CFR §570.500, 24 CFR §576.407(c), ~~24 CFR Part 215 (if §92.503, (as applicable))~~, and 10 TAC §20.9, or as defined by Program Rule;

(21) Participating in activities leading to or giving the appearance of "Conflict of Interest". As applicable, in 2 CFR Part 215 (if applicable), 2 CFR Part 200. 24 CFR ~~§84.42~~§93.353, §92.356 ~~(if applicable), 24 CFR~~, §570.489, 24 CFR §576.404, 10 TAC §20.9, or as defined by Program Rule;

(22) Repeated material financial system deficiencies. As applicable, 2 CFR Part 200, 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, and Texas Grant Management Standards (as applicable))~~, and as defined by Program Rule.

(23) Repeated violations of Single Audit or other programmatic audit requirements;

(24) Failure to remain a CHDO for Department committed HOME funds;

(25) Commingling of funds, Misapplication of funds;

(26) Refusing to submit a required Audit Certification Form, Single Audit, or other programmatic audit;

(27) Refusing to timely respond to reports/provide required correspondence;

(28) Failure to timely expend funds; and

(29) A Monitoring Event determines that 50% or more of the client or household files reviewed do not contain required documentation to support income eligibility or indicate that the client or household is not income eligible.

(b) The Department shall debar any Responsible Party, Consultant, or Vendor who is debarred from

participation in any program administered by the United States Government.

(c) Debarment for violations of the Department's Multifamily Programs. The Department shall debar any Responsible Party who has materially or repeatedly violated any condition imposed by the Department in connection with the administration of a Department program, including but not limited to a material or repeated violation of a land use restriction agreement (LURA) ~~or Contract.~~ Subsection (d) of this section provides the criteria the Department will use to determine if there has been a material violation of a LURA. Subsections (e)(1) and (e)(2) of this section provide the criteria the Department shall use to determine if there have been repeated violations of a LURA.

(d) Material violations of a LURA. A Responsible Party will be considered to have materially violated a LURA, Program Agreement, or condition imposed by the Department and shall be referred to the committee for mandatory Debarment if they:

(1) Control a Development that has, on more than one occasion scored 50 or less on a UPCS inspection; or has, on more than one occasion scored 50 or less on a NSPIRE inspection, or any combination thereof. The Compliance Division may temporarily decrease this NSPIRE score threshold with approval by the Executive Director, for a period of time not longer than one year, so long as the score threshold is applied evenly to all properties;

(2) Refuse to allow a monitoring visit when proper notice was provided or failed to notify residents, resulting in inspection cancellation, or otherwise fails to make units and records available;

(3) Refuse to reduce rents to less than the highest allowed under the LURA;

~~(4)~~ (4) Refuse to correct a UPCS, NSPIRE, or final construction inspection deficiency after the effective date of this rule;

~~(5)~~ (5) Fail to meet minimum set aside by the end of the first year of the credit period (HTC Developments only) after the effective date of this rule April 1, 2021; or

~~(5)~~ (6) Excluding an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program after the effective date of this rule April 1, 2021.

(e) Repeated Violations of a LURA that shall be referred to the Committee for Debarment.

(1) A Responsible Party shall be referred to the Committee for mandatory Debarment if they Control a Development that, during two Monitoring Events in a row is found to be out of compliance with the following Events of Noncompliance:

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

(B) Any Uniform Physical Condition Standards Violations that result in a score of 70 or below in sequential UPCS inspections after ~~the effective date of this rule;~~ April 1, 2021 or NSPIRE violations that result in a score of 50 or below in sequential inspections after the effective date of this rule, or any combination thereof. The Compliance Division may temporally decrease this NSPIRE score threshold with approval by the Executive Director, for a period not to exceed one year, so long as the score threshold is applied evenly to all properties;

(C) Refuse to submit all or parts of the Annual Owner's Compliance Report for two consecutive years after ~~the effective date of this rule; or~~ April 1, 2021; or

(D) Gross rents exceed the highest rent allowed under the LURA or other deed restriction.

(2) Repeated violations in a portfolio. Persons who control five or more Actively Monitored Developments will be considered for Debarment based on repeated violations in a portfolio. A Person shall be referred to be committee ~~for mandatory will be referred for Debarment~~ if an inspection or referral, after ~~the effective date of this rule~~ April 1, 2021, indicates the following:

(A) 50% or more of the Actively Monitored Developments in the portfolio have been referred to the Enforcement Committee; ~~or, within the last three years. The Enforcement Committee may increase this threshold at its discretion. For example, if three properties in a five-property portfolio are monitored in the same month, and then referred to the Enforcement Committee at the same time, it may be appropriate to increase the 50% threshold; or,~~

(B) 50% or more of the Actively Monitored Developments in the portfolio score a 70 or less during a Uniform Physical Conditions Standards inspection or score 50 or less during a NSPIRE inspection, or any combination thereof. The Compliance Division may decrease this NSPIRE score threshold with approval by the Executive Director, so long as the score threshold is applied evenly to all properties.

(f) Debarment for violations of ~~all other~~ Department Programs, with the exception of the Non-Discretionary funds in the Community Services Block Grant program. Material or repeated violations of conditions imposed in connection with the administration of Programs administered by the Department. Administrators, Subrecipients, Responsible Parties, contractors, multifamily owners, and related parties shall be referred to the Committee for consideration for Debarment for violations including but not limited to:

(1) 50% or more loan defaults in the first 12 months of the loan agreement after ~~the effective date~~ April 1, 2021 ~~of this rule;~~

(2) The following Davis Bacon Act Violations:

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

(B) Refusing 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.

(3) The following violations of the Uniform Relocation Act and requirements of §104(d):

(A) Repeated failure to provide the General Information Notice to tenants prior to application. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352 and HUD Handbook 1378.

(B) Repeated failure to provide all required information in the General Information Notice. 49 CFR §24.203, 24 CFR §570.606, 24 CFR §92.353, 24 CFR §93.352 ~~and, or~~ 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, 24 CFR §92.353, 24 CFR §93.352, ~~and or~~ 24 CFR §570.606.

(D) Repeated failure to provide all required information in the Notice of Eligibility and/or Notice of Non-displacement. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, ~~and or~~ 24 CFR §570.606.

(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, 24 CFR §92.353, 24 CFR §93.352, ~~and or~~ 24 CFR §570.606.

(F) Repeated failure to perform and document "decent, safe and sanitary" inspections of replacement housing. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, ~~and or~~ 24 CFR §570.606.

(G) Refusing to properly provide Uniform Relocation Act or §104(d) assistance. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §570.606 and §104(d) of the Housing & Community Development Act of 1974 - 24 CFR Part 42.

(4) Refusing to reimburse excess cash on hand;

(5) Using Department funds to demolish a homeowner's dwelling and then refusing to rebuild;

(6) Drawing down Department funds for an eligible use and then refusing to pay a properly submitted request for payment to a subgrantee or vendor with the drawn down funds.

(g) The referring division shall provide the Responsible Party with written notice of the referral to the Committee, setting forth the facts and circumstances that justify the referral for Debarment consideration.

(h) The Secretary shall then offer the Responsible Party the opportunity to attend an Informal Conference with the Committee to discuss resolution of the. In the event that the Debarment referral was the result of a violated agreed order or a determination that 50% or more of the Actively Monitored Developments in their portfolio have been referred to the Enforcement Committee, the above written notice of the referral to the Committee and the informal conference notice shall be combined into a single notice issued by the Secretary.

(i) A Debarment Informal Conference may result in the following, which shall be reported to the Executive Director:

- (1) A determination that the Department did not have sufficient information and/or that the Responsible Party does not meet any of the criteria for Debarment;
 - (2) An agreed Debarment, with a proposed agreed order to be prepared and presented to the Board for approval;
 - (3) A recommendation by the Committee to the Executive Director for Debarment;
 - (4) A request for further information, to be considered during a future meeting; or,
 - (5) If Debarment is not mandatory, an agreement to dismiss the matter with no further action, an agreement to dismiss the matter with corrective action being taken, or any other action as the Committee deems appropriate, which will then be reported to the Executive Director.
- (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, presence or absence of corrective action taken or planned, 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 the determination, and an explanation of the determination if different than the Committee's recommendation, including the period of Debarment, if any. The Responsible Party may appeal the Debarment determination in writing to the Board as described in §1.7 of this title (relating to Appeals Process).
- (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) Until the Responsible Party's Debarment referral is fully resolved, the Responsible Party may not participate in new Department financing and assistance opportunities.
- (n) Any person who has been debarred is prohibited from participation as set forth in the final order of Debarment for the term of their Debarment. Unless specifically stated in the order of Debarment, Debarment does not relieve a Responsible Party from its current obligations, or prohibit it from continuing its participation in any existing engagements funded through the Department, nor limit its responsibilities and duties thereunder. The Board will not consider modifying the terms of the

Debarment after the issuance of a final order of Debarment.

(o) If an Eligible Entity under the CSBG Act meets any of the criteria for Debarment in this rule, the Department may recommend the Eligible Entity for Debarment. However, that referral or recommendation shall not proceed until the termination of the Eligible Entity's status under the CSBG Act has concluded, and no right of appeal or review remains.

(p) All correspondence under this rule shall be delivered electronically.