

Texas Administrative Code

<u>TITLE 10</u>	COMMUNITY DEVELOPMENT
<u>PART 1</u>	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
<u>CHAPTER 2</u>	ENFORCEMENT
<u>SUBCHAPTER A</u>	GENERAL
RULE §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, an onsite or desk file monitoring review, an Affirmative Marketing Plan review, or a Written Policies and Procedures Review. UPCS 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 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.

Source Note: The provisions of this §2.102 adopted to be effective April 1, 2021, 46 TexReg 1992

[List of Titles](#)
[Back to List](#)
[HOME](#)
[TEXAS REGISTER](#)
[TEXAS ADMINISTRATIVE CODE](#)
[OPEN MEETINGS](#)

Texas Administrative Code[Next Rule>>](#)[TITLE 10](#)

COMMUNITY DEVELOPMENT

[PART 1](#)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[CHAPTER 11](#)

QUALIFIED ALLOCATION PLAN (QAP)

[SUBCHAPTER A](#)

PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

RULE §11.1

General

[...]

(30) Control (including the terms "Controlling," "Controlled by," and "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. A member of a multi-member body is not acting in concert and therefore does not exercise control in that role, but may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Persons with Control of a Development must be identified in the Application. Controlling individuals and entities are set forth in subparagraphs (A) - (E) of this paragraph. Multiple Persons may be deemed to have Control simultaneously.

(A) For for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including, but not limited to, the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 50% or more interest in the corporation, and any individual who has Control with respect to such stockholder.

(B) For nonprofit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including, but not limited to, the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the executive director or equivalent.

(C) For trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries.

(D) For limited liability companies, all managers, managing members, members having a 50% or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(E) For partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control.

Texas Administrative Code

[TITLE 10](#)[PART 1](#)[CHAPTER 2](#)[SUBCHAPTER D](#)

RULE §2.401

COMMUNITY DEVELOPMENT

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

ENFORCEMENT

DEBARMENT FROM PARTICIPATION IN PROGRAMS ADMINISTERED BY THE DEPARTMENT

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, 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, 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, without Department approval;

(9) Transferring a Development, after the effective date of this rule, 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 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;

(12) Having any Event of Noncompliance that occur after the effective date of this rule 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;

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

(16) Failing to notify the Department of the availability of 811 PRA units after the effective date of this rule;

(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 §570.500, 24 CFR §576.407(c), 2 CFR Part 215 (if 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". 2 CFR Part 215 (if applicable), 24 CFR §84.42, §92.356 (if applicable), §570.489, §576.404, 10 TAC §20.9, or as defined by Program Rule;

(22) 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) 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). 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;
 - (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) 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; or
 - (5) 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.
- (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;
 - (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
 - (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, indicates the following:
 - (A) 50% or more of the Actively Monitored Developments in the portfolio have been referred to the Enforcement Committee; 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.
- (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 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 §92.353, 24 CFR §93.352 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, 24 CFR §92.353, 24 CFR §93.352, and 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 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 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 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:

[Cont'd...](#)

[Next Page](#)

List of Titles

Back to List

HOME

TEXAS REGISTER

TEXAS ADMINISTRATIVE CODE

OPEN MEETINGS

Texas Administrative Code

[TITLE 10](#)[PART 1](#)[CHAPTER 2](#)[SUBCHAPTER D](#)

RULE §2.401

COMMUNITY DEVELOPMENT

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

ENFORCEMENT

DEBARMENT FROM PARTICIPATION IN PROGRAMS ADMINISTERED BY THE DEPARTMENT

General

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- (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.
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Source Note: The provisions of this §2.401 adopted to be effective November 19, 2014, 39 TexReg 8976; amended to be effective April 1, 2021, 46 TexReg 1992

[Previous Page](#)[List of Titles](#)[Back to List](#)[HOME](#)[TEXAS REGISTER](#)[TEXAS ADMINISTRATIVE CODE](#)[OPEN MEETINGS](#)

Sec. 2306.0504. DEBARMENT FROM PROGRAM PARTICIPATION. (a) The department shall develop, and the board by rule shall adopt, a policy providing for the debarment of a person from participation in programs administered by the department.

(b) The department may debar a person from participation in a department program on the basis of the person's past failure to comply with any condition imposed by the department in the administration of its programs.

(c) The department shall debar a person from participation in a department program if the person:

- (1) materially or repeatedly violates 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 regarding a development supported with a housing tax credit allocation; or

- (2) is debarred from participation in federal housing programs by the United States Department of Housing and Urban Development.

(d) A person debarred by the department from participation in a department program may appeal the person's debarment to the board.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Transferred, redesignated and amended from Government Code, Section 2306.6721 by Acts 2013, 83rd Leg., R.S., Ch. 556 (S.B. [659](#)), Sec. 1, eff. September 1, 2013.

Transferred, redesignated and amended from Government Code, Section 2306.6721 by Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. [3361](#)), Sec. 1.07, eff. September 1, 2013.