

Common Issues of Noncompliance

June 2025

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Contact Information

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Announcements

Schedule:

- The webinar and open forum will run from 9:00 am until approximately 11:30 am
- We will take a break mid-morning to shift from the webinar to the open forum
- Staff will be present to answer any questions

Housekeeping:

- Certificates **will not** be emailed but you will receive an email confirming your attendance, usually within 24-hours in an email from the GoTo Platform, please check your “junk” folders as we cannot reissue these emails
 - If you did not use your emailed link for the training from your registration you will not receive a follow-up email or show as having attended the webinar
- We suggest you silence your phones and put an “out of office” email response to help avoid distractions during the training
- Please pose questions and comments to the “Questions Box”

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Resources

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TDHCA (Department) Resources

- **Main Compliance Page**
 - <https://www.tdhca.texas.gov/compliance>
- **Compliance Manuals & Rules**
 - <https://www.tdhca.texas.gov/compliance-manuals-and-rules>
- **Compliance Forms**
 - <https://www.tdhca.texas.gov/compliance-forms>
- **Compliance Reports**
 - <https://www.tdhca.texas.gov/compliance-reports>
- **Compliance Utility Allowance Information**
 - <https://www.tdhca.texas.gov/compliance-utility-allowance-information>
- **Income and Rent Limits**
 - <https://www.tdhca.texas.gov/income-and-rent-limits>
- **Compliance Training**
 - <https://www.tdhca.texas.gov/compliance-training>
- **Compliance Frequently Asked Questions (FAQs)**
 - <https://www.tdhca.texas.gov/compliance-frequently-asked-questions-faqs>
- **Compliance Division Staff**
 - <https://www.tdhca.texas.gov/compliance-division-staff>

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In This Training...

- In this training:
 - We **will** talk about some of the common issues of noncompliance.
 - We **will** talk about some of what causes those issues and some common ways to correct.
 - We **will** talk about resources that can be used to remain in compliance.
- We **will not** discuss specific properties and monitoring reviews.
- We **will not** discuss programs that are not monitored by the Department.
- We **will not** change the required corrective action for an existing monitoring review.

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Ineligible Households

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Issue of Noncompliance & References

- Issue of Noncompliance:
 - Program Unit not leased to Low-Income household/Household income above the income limit upon initial occupancy
- Reportable on Form 8823 to the IRS?
 - Yes, during the Federal Compliance Period
- 8823 Audit Guide Chapter 4
- Texas Administrative Code Chapter 10, Subchapter F §10.611

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Common Causes of Noncompliance

- This is the “granddaddy” of noncompliance and there are several areas in which the Department would not be able to determine eligibility and cite noncompliance.
 - Calculation of income over the highest limit
 - Income not verified or included in the eligibility calculation
 - Assets not verified or included in the eligibility calculation
 - Income Certifications not executed by the household
 - Additional household members not properly added
 - Live-in Aides/Foster Persons not properly verified
 - Applicable Fraction violations
 - Household being moved from one project to another without certification
 - Using Section 8 Verification improperly

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Calculation of Income Over the Highest Limit

- Common causes of miscalculations or errors
 - Rate of Pay Changes
 - Miscalculations
 - Child Support not being calculated correctly
- Citation of Noncompliance Examples
 - The Department calculated the household’s income using the Employment Verification. The total household income at move-in equals \$26,910, which exceeded the 2024 income limit of \$22,650 for a 1-person household.
 - The Department calculated the household’s income using the pay frequency indicated on the paystubs, 26 pay periods. The total household income at move-in equals \$54,166.58, which exceeded the 2024 income limit of \$52,920 for a 1-person household.

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Income/Asset not Verified or Included in the Eligibility Calculation

- Common causes of miscalculations or errors
 - Paystubs over 120 days
 - Employment or income disclosed on the application but not verified
 - Assets that are over the applicable HUD Threshold (currently \$51,600) must be evaluated for inclusion and imputed income may need to be included
 - Actual Income from assets is always included
- Citation of Noncompliance Examples
 - The monitor was unable to establish eligibility; the application submitted by the applicant indicated employment income. The file contained an unemployment affidavit, and no other explanation was in the file.
 - The monitor was unable to determine the household's eligibility at the time of move-in. The tenant file contained paystubs which were more than 120 days from the date of the initial certification.
 - The monitor was unable to establish eligibility; the application submitted by the applicant indicated owned real estate. The file contained an asset certification indicating only a checking account, no other explanation was in the file.

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Income Certifications not Executed by the Household

- Cause of noncompliance
 - The Income Certification must be signed once the household is qualified and moves into a designated unit.
- Citation of Noncompliance Examples
 - **Reason:** The household occupied the unit on February 10, 2025, without executing an Income Certification.
 - **Corrective Action:** Present and have the household execute the Income Certification from the time of initial occupancy. Do not backdate. Submit the executed Income Certification to the Department for review.

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Additional Household Member(s) not Properly Added

- Common causes of miscalculations or errors
 - When a household member is added they must be verified as a new applicant would be, their income is then added to the most recent certification for the household.
- Citation of Noncompliance Examples
 - **Reason:** The file contained information that a new member has been added to the household. The file did not contain the verifications or updated Income Certification to properly reflect the addition.
 - **Corrective Action:** Submit documentation supporting eligibility of the new household member as of July 25, 2024 (at the time added to the household). Present and have the new household member execute the Income Certification from the time of their initial occupancy.
 - **Reason:** The file contained an application and verifications for a new household member; however, the new household member was not added to the most recent certification.
 - **Corrective Action:** Present and have the new household member execute the Income Certification from the time of their initial occupancy. Do not backdate. Submit the executed Income Certification to the Department for review.

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Live-in Aides/Foster Persons not Properly Verified

- Cause of noncompliance
 - A live-in aide must meet the requirements and then income is excluded.
 - Foster persons that are placed with a court order are excluded in the calculation of eligibility and household sizes for eligibility purposes
- Citation of Noncompliance Examples
 - The household occupied the unit on March 10, 2025. The application indicates that the one of the household members is a live-in aide; however, the need for an aide was not present in the tenant file.
 - The household contains 4 persons, the head of household, their spouse and two foster children. The annual income for the household is \$73,250 which is over the applicable limit for a 2-person household, \$60,480. Foster persons are not considered as household members for purposes of eligibility.

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Applicable Fraction Violations

- Common causes of miscalculations or errors
 - When there are too many market units in a building
 - When the fraction is based on square footage calculation and the wrong sized units are converted to market units
- Citation of Noncompliance Examples
 - The applicable fraction for building 1 (TX2521501) should be 96.30%, based on the unit count. The building is currently being leased at 94.44%, based on the unit count. Unit 102 moved in as a market unit on October 16, 2024.
 - The noncompliance will be corrected once the applicable fraction for the building is restored.

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Household Moving from One Project to Another Without Certification

- Cause of noncompliance
 - When a household moves from one project to another they must be qualified as an eligible household. Project Elections are made on Forms 8609 line 8(b).
- Citation of Noncompliance Examples
 - The household in unit 123 (building 1) appears to have originally occupied unit 789 (building 3) on March 1, 2023. The household moved into the new unit on October 1, 2024, without being properly certified as an eligible household. The owner elected to treat each building as an individual project for purposes of the Housing Tax Credit program.

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Using the Section 8 Verification Improperly

- Cause of noncompliance
 - The effective date of the most recent certification on the Section 8 Verification must be a date that is no more than 120 days before the certification of the household.
- Citation of Noncompliance Examples
 - **Reason:** The household in unit 1011 occupied the unit on March 1, 2025. The household was qualified using a Section 8 Verification with a date of March 1, 2024. The effective date of the Verification is more than 120 days prior to the Certification effective date.
 - **Corrective Action:** Verify the income/assets from the time of move-in and update the Income Certification, if needed. Submit the income/assets verification and the updated Income Certification for Department review. If unable to verify income/assets from the time of move-in, the household may be qualified under current circumstances.

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Corrective Action Examples

- When the unit becomes available lease it to a qualifying household. Submit copies of the new household's application, verifications of income and assets, executed Income Certification form, first and signatory page of the lease contract, applicable lease addenda including the executed Acknowledgment page of the Tenants Right and Resource Guide.
- If the household's circumstances have changed since move-in, a new certification may be performed using current circumstances and current income and asset information. If a new certification is performed for the existing household, submit the new application, verification income and asset, verification of student status, and new executed Income Certification documentation to the Department for review.
- Verify the income/asset from the time of move-in and update the Income Certification, if needed. Submit the income/asset verification and the updated Income Certification for Department review. If unable to verify income/asset from the time of move-in, the household may be qualified under current circumstances.

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Utility Allowances

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Issue of Noncompliance & References

- Issue of Noncompliance:
 - Noncompliance with utility allowance requirements described in §10.614 of this subchapter and/or Treasury Regulation §1.42-10
- Reportable on Form 8823 to the IRS?
 - Yes, sometimes
- 8823 Audit Guide Chapter 18
- Texas Administrative Code Chapter 10, Subchapter F §10.614
- Treasury Regulation §1.42-10 (Commonly called the “Dash 10 Regs”)

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Common Causes of Noncompliance

- Utility Allowance noncompliance can be caused by several things, the most common are listed below
 - Not implementing timely
 - Flat Fee Not Included
 - Wrong Public Housing Authority was used
 - HUD Regulated
 - Annual Review

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Not Implementing Timely

- Cause of noncompliance
 - Unit Status Report was not updated with the current UA
- Citation of Noncompliance Examples
 - **Reason:** The current utility allowance was issued on September 30, 2024, for rents due after December 30, 2024. The Unit Status Report (USR) submitted for the monitoring review does not indicate that the Development has implemented the utility allowance as required.
 - **Corrective Action:** Implement the utility allowance and update the USR reflecting the implementation and any change in rents. Submit a dated cover letter stating that the utility allowance has been updated on the USR. The Department will pull the current USR from the Compliance Monitoring and Tracking System (CMTS) to determine compliance. The noncompliance will be considered corrected when the USR is updated, and any additional noncompliance triggered by the failure to implement are addressed.

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Flat Fee Not Included

- Cause of noncompliance
 - Sometimes PHA schedules include fees for electric and/or gas services, if these are not included in the calculated UA then the UA is not properly calculated.
- Citation of Noncompliance Examples
 - **Reason:** The residents are responsible for electric at the Development and the Public Housing Authority published utility allowance includes a flat fee for electric. The Development did not include this flat fee in the calculation of the utility allowance.
 - **Corrective Action:** Implement the correct utility allowance, including the flat fee, and update the USR reflecting the implementation and any change in rents. Submit a dated cover letter stating that the UA has been updated on the USR. The Department will pull the current USR from CMTS to determine compliance. The noncompliance will be considered corrected when the USR is updated, and any additional noncompliance triggered by the failure to implement are addressed.

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Wrong Public Housing Authority was used

- Cause of noncompliance
 - If a property is in a city with a PHA then that is the applicable PHA, the county PHA cannot be used unless the property is in the county but not in a municipality where there is an existing PHA with a Section 8 program.
- Citation of Noncompliance Examples
 - **Reason:** The Development lies in the city of San Antonio, within Bexar County; however, the San Antonio Housing Authority PHA Schedule does not appear to be the PHA schedule used for the Utility Allowance. The Development submitted the Bexar County PHA schedule and a Unit Status Report (USR) which reflected those amounts.
 - **Corrective Action:** Obtain the current UA schedule from the San Antonio Housing Authority, implement the correct UA and update the USR reflecting the implementation and any change in rents. Submit a dated cover letter stating that the UA has been updated on the USR along with the correct UA schedule. The Department will pull the current USR from CMTS to determine compliance. The noncompliance will be considered corrected when the USR is updated, and any additional noncompliance triggered by the failure to implement are addressed.

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HUD Regulated

- Cause of noncompliance
 - If the development has funds that are listed in HUD Notice H-2015-04 then the HUD funding is the determining factor for the UA. If the property does not have HUD Funds but does have MFDL funds, then the MFDL funding dictates the UA for the HUD-Regulated buildings. Not using the correct UA will cause noncompliance.
- Citation of Noncompliance Examples
 - **Reason:** The utility allowance is calculated on a building-by-building basis and, as every building at the development contains at least 1 Public Housing (HOME another PJ, any other HUD-regulated program) unit, the buildings at the property are considered HUD-regulated and the only allowable utility allowance for all rent-restricted units is the method prescribed under the relevant HUD program.
 - **Corrective Action:** (1) Obtain the most current utility allowance from (enter entity) for their (56) public housing units. (2) Implement the correct utility allowance; and (3) update the USR to reflect the updated tenant paid rent, utility allowance, and the rental assistance for each unit. Submit a dated cover letter and the most current utility allowance to the Department for review. Once a properly calculated utility allowance is in place, the Department will review the rent for each household to ensure that all the occupancy requirements prescribed in the LURA are met. Based on that review, additional noncompliance may be cited but will be addressed under separate cover.

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Annual Review

- Cause of noncompliance
 - Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year.
- Citation of Noncompliance Examples
 - **Reason:** During the review, the Department noted that the owner had not requested an annual review of the development's utility allowance on October 1, 2024, as required.
 - **Corrective Action:** If the Owner wishes to continue to use the (enter method), submit the required documentation for annual review. The Owner may also elect a different utility allowance methodology found under §10.614. Prior to changing the methodology, notify the Department as required. Once a properly calculated utility allowance is in effect, the Department will review the gross rents for each unit affected to confirm compliance with the occupancy requirements of the LURA. Any additional noncompliance that results from that review will be addressed under separate cover.

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Utility Allowance – General Notes

- Except for MFDL developments, if an Owner fails to submit for annual review during the calendar year, the Development's Utility Allowance will default to the applicable PHA allowance. If the Development is in an area that does not have a PHA, the Development fails to have a properly calculated Utility Allowance.
- The Owner may elect a different utility allowance methodology found under §10.614. Prior to changing the methodology, notify the Department as required. Once a properly calculated utility allowance is in effect, the Department will review the gross rents for each unit affected to confirm compliance with the occupancy requirements of the LURA. Any additional noncompliance that results from that review will be addressed under separate cover.

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NSPIRE Inspections

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Issue of Noncompliance & References

- Issue of Noncompliance:
 - Violation of the National Standards for the Physical Inspection of Real Estate (NSPIRE Inspection)
- Reportable on Form 8823 to the IRS?
 - Yes, during the Federal Compliance Period
- 8823 Audit Guide Chapter 6
- Texas Administrative Code Chapter 10, Subchapter F §10.621

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Common Causes of Noncompliance

- This is the umbrella issue of noncompliance for the NSPIRE Inspections.
 - Inoperable smoke detectors
 - Missing/damaged/expired fire extinguishers
 - Exposed wires/open panels
 - Unprotected outlet is present within six feet of a water source
 - Exposed electrical conductor
 - Infestation (roaches)
 - AFCI outlet or AFCI breaker is not visibly damaged and the test or reset button is inoperable

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TDHCA Scoring Scale

- TDHCA will continue to use a 0-100 scoring scale for multifamily properties inspected using NSPIRE
- Developments scoring a 70 or below, or deemed to be in poor physical condition will be subject to an accelerated inspection schedule until the score improves
- The Responsible Party may be referred to the Department's Enforcement Committee for possible debarment if on more than one occasion the property scores 50 or less on an NSPIRE inspection

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Corrective Action

- All Inspection Reports will include the score
 - Two types of corrective action based on the score
 - Score 76 or higher
 - Three documents will be issued for corrective action:
 - Excel Spreadsheet – enter the full name of the person or entity that corrected each deficiency and the date the deficiency was corrected
 - Owner Certification; form-fillable PDF
 - Complete NSPIRE Inspection Report with score in PDF format
 - Score 75 or below
 - Submit written documentation for corrections of each deficiency cited in the report (including the work orders for the Exigent Health & Safety issues that were corrected immediately)
 - Invoices, not bids, for all deficiencies corrected by a vendor, including pest control tickets
 - Detailed, complete maintenance requests

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Corrective Action continued

- Score 75 or below written documentation requirements
 - Site Maintenance Requests must include:
 1. The identified deficiency for repairs
 2. The location of the deficiency
 3. A **DETAILED** description of the action taken, or repair made to correct the deficiency (single words like complete, done, repaired, etc. are not acceptable)
 4. Date the repair was completed
 5. The signature of the person responsible for the repairs or the person who is accountable for the quality of the repair

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Gross Rent and Additional Rent & Occupancy

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Issue of Noncompliance & References

- Issue of Noncompliance:
 - Gross rent exceeds the highest rent allowed under the LURA or other deed restriction
- Reportable on Form 8823 to the IRS?
 - Yes, during the Federal Compliance Period
- 8823 Audit Guide Chapter 11
- Texas Administrative Code Chapter 10, Subchapter F §10.622
- HTC 50% on 20/50; HTC 60% on 40/60; All designations on Average Income

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Common Causes of Noncompliance

- Gross Rent noncompliance can be caused by several things, the most common are listed below
 - Not including mandatory fees in the gross rent calculation or charging disallowed fees
 - Not using the correct Utility Allowance (UA)
 - Overcharging tenant rent

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Fees

- Cause of noncompliance
 - Not including mandatory fees in the gross rent calculation or charging disallowed fees.
- Citation of Noncompliance Examples
 - **Reason:** During the review it was noted that [renter's insurance] is required as a condition of occupancy. The cost of services that are required as a condition of occupancy must be included in gross rent calculation.
 - **Corrective Action:** Submit documentation evidencing the cost of [renter's insurance] for Department review. The Department will review the gross rent of each unit to confirm compliance, any additional noncompliance that results from that review will be addressed under separate cover.
 - **Reason:** The Owner stated applicants are charged a \$15 fee for background checks. No documentation was available during the monitoring review to support the application (background check) fee.
 - **Corrective Action:** Submit to the Department monthly invoice(s) and documentation demonstrating total number applications run at the Development.

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Overcharged Rent – Incorrect Utility Allowance

- Cause of noncompliance
 - The tenant rent is over the allowable limit when the UA and any applicable fees are added together.
 - The development has not implemented the correct UA.
- Citation of Noncompliance Examples
 - Tenant paid rent of \$600, plus the utility allowance of \$60 exceeds the 1- bedroom 60% rent limit of \$640.
 - Tenant paid rent of \$600, plus utility allowance of \$60, plus the mandatory month to month fee of \$100 exceeds the 1- bedroom 60% rent limit of \$640.
 - The tenant payment of rent of \$957.00 plus the utility allowance of \$79 equals to \$1,036, which exceeds the 2- bedroom allowable rent limit of \$1,030.00 at the 60% AMI.

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Corrective Action Examples

- (HTC) Reduce the rent charged. Submit to the Department for review a tenant ledger and a copy of the lease agreement or lease addendum demonstrating the reduction. Once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit for the remainder of the owner's tax year. A unit is back in compliance on the first day of the owner's next tax year if the rent charged monthly does not exceed the limit. Owners are not required to refund the overcharged fee amount. If the Development refunds the overcharged fee in full or in part, the unit will remain out of compliance unit January 1st of the next year.
- (Post 15 HTC) To correct, calculate the amount of rent overage paid by the household. The owner may either: 1) obtain written certification from the household to accept a credit on the account in lieu of the refund or 2) a check for the full amount of the refund. If the household elects to accept the credit in lieu of the refund, submit the certification from the household of the acceptance of the ledger credit and the tenant ledger demonstrating the reduction of rent and the issued credit. If the household elects to collect the refund, submit a copy of the check issued to the tenant and the tenant ledger demonstrating the reduction of rent. The noncompliance will be considered corrected on the date which the overcharged rent was refunded or when the tenant account has received the credit and the rent plus the utility allowance is equal to or less than the applicable limit.

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Issue of Noncompliance & References

- Issue of Noncompliance:
 - Development failed to meet additional state required rent and occupancy restrictions
- Reportable on Form 8823 to the IRS?
 - No, these are state requirements
- Texas Administrative Code Chapter 10, Subchapter F §10.615
- Many Developments have additional rent and income requirements which are lower than, or in addition to, the federal set-aside. Any additional designations will be outlined in the LURA.

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Common Causes of Noncompliance

- Additional Rent and Occupancy noncompliance can be caused by several things, similar to Gross Rent noncompliance but these are not reportable to the IRS on Form 8823
 - Triggered by an incorrect UA
 - Triggered by testing performed with a monitoring review
 - Triggered by Unit Designation Change

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Incorrect UA

- Cause of noncompliance
 - The development has not implemented the correct UA.
- Citation of Noncompliance Examples
 - Due to the failure to implement the correct utility allowance, several units do not meet the rent restrictions of 30% or 50% AMI as indicated in Appendix A of the Land Use Restriction Agreement.

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Testing Performed with a Monitoring Review

- Cause of noncompliance
 - Triggered by testing performed with a monitoring review
- Citation of Noncompliance Examples
 - Per the Land Use Restriction Agreement (LURA), the property is required to maintain 11 units with households that have an income and rent restricted at or below 50% AMI. While there are numerous units that appear to income qualify, the Department was only able to identify 10 units with gross rent restricted to the 50% rent limit.

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Designation Changes

- Cause of noncompliance
 - Triggered by Unit Designation Change
- Citation of Noncompliance Examples
 - A household's program designation, as recorded on the Income Certification, at the time of move-in, cannot be increased unless the household was found to never have income qualified for the unit, no longer income qualifies for the unit or program rules require the change. The household in unit 102 was originally certified as a 30% household, the most recent certification indicated the designation has been changed to 50%.

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Corrective Action Examples

- Please review the attached spreadsheet and refund the indicated amounts to the residents. The Department used the historical data entered by the owner in the submitted Unit Status Reports (USR) to make these determinations. If the development finds that the information in the USR's was not correctly updated as required, submit documentation to support the information the development believes to be correct (tenant ledger, lease contracts, etc.). Otherwise, submit a copy of 1) the updated lease reflecting the reduced rent; 2) notification to the household of the reduction; 3) copy of the tenant election to accept a credit or a refund; 4) ledger demonstrating reduced rent is being charged and credit if elected; 5) a calculation of the overcharged rent; and 6) a copy of the issued check if elected. If the resident has vacated and the development cannot locate the resident, the excess monies must be deposited into a trust account for the tenant as outlined in §10.622(e) and documentation of the account must be submitted for review.
- Calculate the total amount of rent overcharged to the resident, refund or credit the affected household and update the Unit Status Report (USR). Submit a copy of 1) the updated lease reflecting the reduced rent; 2) notification to the household of the reduction; 3) copy of the tenant election to accept a credit or a refund; 4) ledger demonstrating reduced rent is being charged and credit if elected; 5) a calculation of the overcharged rent; and 6) a copy of the issued check if elected.

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Recertifications and 10 TAC §10.612

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Issue of Noncompliance & References

- Issue of Noncompliance:
 - Failure to provide Tenant Income Certification and documentation
- Reportable on Form 8823 to the IRS?
 - Yes, during the Federal Compliance Period
- 8823 Audit Guide Chapter 5
- Texas Administrative Code Chapter 10, Subchapter F §10.612
 - In accordance with Title 10 of the Texas Administrative Code §10.612, HTC projects (as defined on Part II question, 8b of IRS Form 8609) with Market Units must complete annual income recertifications. Annual recertifications are due within 120 days of the initial effective date of the tenant income certification

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Common Causes of Noncompliance

- An owner may be cited with noncompliance for failure to provide Tenant Income Certification (TIC) and documentation (DOC) because the development is required to complete annual Income Certifications
 - Annual Income Certification is not completed within 120 days of the move-in anniversary
 - Annual Income Certification is completed after the due date AND after the notification of a monitoring review

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Incomplete Annual Income Certification

- Cause of noncompliance
 - Annual Income Certification is not completed within 120 days of the move-in anniversary
- Citation of Noncompliance Examples
 - **Reason:** During the onsite visit, the Department did not observe an annual recertification for unit 122, which occupied the unit on November 13, 2023. The annual recertification was due on November 13, 2024.
 - **Corrective Action:** Complete an annual recertification for this household and submit the following documentation to the Department: application, necessary verifications, Income Certification and first and signatory page of the lease.

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Completed, but Late and After the Review Notification

- Cause of noncompliance
 - Annual Income Certification is completed after the due date AND after the notification of a monitoring review
- Citation of Noncompliance Examples
 - **Reason:** During the onsite visit, the Department did not observe an annual recertification for unit 122, which occupied the unit on March 13, 2024. The annual recertification was due on March 13, 2025.
 - **Corrective Action:** The annual Income Certification was completed on April 2, 2025; after the review notification dated March 15, 2025.

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Issue of Noncompliance & References

- Issue of Noncompliance:
 - Failure to collect data required by §10.612
- Reportable on Form 8823 to the IRS?
 - No
- Texas Administrative Code Chapter 10, Subchapter F §10.612
 - (b) Annually thereafter on the anniversary date of the household's original move-in or initial designation: (1) Throughout the **Affordability Period**, Owners of Housing Tax Credit Developments must collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, student status, and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form, the Income Certification form, HUD Income Certification form, USDA-Rural Development Income Certification form (as applicable).

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Common Causes of Noncompliance

- An owner may be cited for noncompliance under §10.612 for the following issues:
 - Annual Data Collection not completed at the time of the monitoring review
 - Annual Data Collection completed late and after the notification of the monitoring review
 - Annual Data Collection not completed once in a calendar year on a Post-15 HTC development
 - A household transfers from one unit to another within a project and the original move-in date is not used to conduct annual data collection

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AEC Not Completed on Time

- Cause of noncompliance
 - The Annual Eligibility Certification for the household has not been completed by the anniversary of the initial move-in.
- Citation of Noncompliance Examples
 - **Reason:** The household occupied the unit on April 2, 2024, and the most current annual data collection requirements have not been completed.
 - **Corrective Action:** Complete the annual data collection and submit the executed document to the Department for review. Do not backdate.

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AEC Completed Late - After Notification of Review

- Cause of noncompliance
 - Annual Eligibility Certification is completed after the due date AND after the notification of a monitoring review
- Citation of Noncompliance Examples
 - **Reason:** During the onsite visit, the Department did not observe an Annual Eligibility Certification (AEC) for unit 456, which occupied the unit on February 13, 2024. The annual recertification was due on February 13, 2025.
 - **Corrective Action:** The annual Income Certification was completed on April 2, 2025; after the review notification dated March 15, 2025.

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AEC Not Completed Once in a Calendar Year on a Post-15 HTC Development

- Cause of noncompliance
 - Annual Income Certification is completed after the due date AND after the notification of a monitoring review
- Citation of Noncompliance Examples
 - **Reason:** The household occupied the unit on February 4, 2024, and the most current annual data collection requirements were not completed.
 - **Corrective Action:** Complete the annual data collection and submit the executed document to the Department for review. Do not backdate.
- 10 TAC §10.623(b)(13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status student status and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form

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Household Transfers – AEC Follows Original Move-in Date

- Cause of noncompliance
 - A household transfers from one unit to another within a project and the original move-in date is not used to conduct annual data collection
- Citation of Noncompliance Examples
 - **Reason:** During the onsite visit, the Department did not observe an Annual Eligibility Certification (AEC) for unit 456, which originally occupied a unit in the project on February 13, 2022. The household transferred to a new unit in the same project on August 1, 2023. The annual recertification was due on February 13, 2025.
 - **Corrective Action:** Complete the annual data collection and submit the executed document to the Department for review. Do not backdate.
 - **Technical Assistance:** When a household transfers within an HTC project, they retain the original move-in date, and this will be the date that “drives” future annual certifications.

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General Issues of Noncompliance

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Issue of Noncompliance & References

- Issue of Noncompliance:
 - Noncompliance with social service requirements
- Reportable on Form 8823 to the IRS?
 - No
- Texas Administrative Code Chapter 10, Subchapter F §10.619
 - If a Development's LURA or application requires the provision of social services, the Department will confirm this requirement is being met in accordance with the LURA or application. Owners are required to maintain sufficient documentation to evidence that services are being provided. Documentation will be reviewed during monitoring reviews beginning with the first monitoring review.

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Noncompliance with Social Service Requirements

- Cause of noncompliance
 - The monitor was unable to determine that all, or some, of the required services were being offered.
- Citation of Noncompliance Examples
 - **Reason:** Per Appendix A of the Land Use Restriction Agreement, the Development is required to provide supportive services onsite. During the monitoring review, the Department was unable to identify that the required services were being provided.
 - **Corrective Action:** Implement the required social services and submit documentation (flyers, sign-in sheets, etc.) evidencing compliance with the Land Use Restriction Agreement to the Department for review.

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Noncompliance with Social Service Requirements – Additional Point

- Additional point for supportive services coordination efforts
 - The Developments Land Use Restriction Agreement (LURA) indicates that the owner was awarded an additional point for certifying that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's tenants and will make the Development community space available to them on a regularly scheduled basis to provide outreach services and education to the tenants. The owner may contact service providers on the Departments list or contact other providers that serve the general area in which the Development is located.
 - **Reason:** Department staff reviewed documentation of supportive services and could not determine that the additional awarded service point requirements were being met.
 - **Corrective Action:** Provide documentation for Department review evidencing that the additional awarded service point requirements have been met.

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Issue of Noncompliance & References

- Issue of Noncompliance:
 - Failure to market to veterans as required in the LURA
- Reportable on Form 8823 to the IRS?
 - No
- This requirement is outlined in the development's Land Use Restriction Agreement (LURA) and was determined by the Qualified Allocation Plan (QAP) during the allocation year.

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Failure to Market to Veterans as Required in the LURA

- Cause of noncompliance
 - The monitor was unable to determine if the marketing to veteran's organizations was being done, or the marketing was done more than a year before the monitoring review.
- Citation of Noncompliance Examples
 - **Reason:** The Land Use Restriction Agreement (LURA) requires the Development Owner to specifically market to veterans through direct marketing or contracts with veteran's organizations. The documentation submitted for the monitoring review did not contain evidence of the veteran's marketing.
 - **Corrective Action:** Submit documentation evidencing the marketing to veteran's organizations has been conducted. The marketing must be conducted annually, at a minimum.

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Issue of Noncompliance & References

- Issue of Noncompliance:
 - Program unit occupied by nonqualified students
- Reportable on Form 8823 to the IRS?
 - Yes, if during the Federal Compliance Period for the HTC program
- 8823 Audit Guide Chapter 17
- Texas Administrative Code Chapter 10, Subchapter F §10.612

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HTC Unit Occupied by Nonqualified Students

- Cause of noncompliance
 - If all household members in an HTC unit are full-time students, there must be an exception met for the household to remain eligible.
- Citation of Noncompliance Examples
 - **Reason:** The monitor was unable to establish eligibility. The household's application indicated all household members were currently students. However, no documentation to evidence student status from the institution of higher education was in the tenant file.
 - **Reason:** The Annual Eligibility Certification completed on January 31, 2025, indicated that the one-person household was currently a full-time student. However, no documentation to evidence student status or the qualifying exemption was displayed in the tenant's file.

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HTC Unit Occupied by Nonqualified Students continued

- **Corrective Action:**

- Obtain verification of student status for the (enter year) calendar year to determine if the household is comprised of all full-time students for at least 5 months of the calendar year. Provide to the Department for review, documentations of household student status and any exemption documentation to evidence eligibility.
- If unable to verify student status for the (2025) calendar year, the household may be qualified under current circumstances. If a new certification is performed for the existing household, submit the new application, verification of income and assets, verification of student status and qualifying exemption, and new executed Income Certification documentation for Department review.
- If the household remains ineligible, when the unit becomes available lease it to a qualifying household. Submit copies of the new household's application, verifications of income and assets, executed Income Certification form, first and signatory page of the lease contract, applicable lease addendums and the executed Acknowledgment page of the Tenant Rights and Resources Guide.

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Issue of Noncompliance & References

- **Issue of Noncompliance:**
 - No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA
- **Reportable on Form 8823 to the IRS?**
 - Yes, if HTC election was made under a nonprofit set-aside
 - No, if the nonprofit election is not on the 8609 or if the noncompliance is for a HUB
- **8823 Audit Guide Chapter 22**
- **Texas Administrative Code Chapter 10, Subchapter F §10.620**

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Non-Profit or Historically Underutilized Business (HUB)

- Cause of noncompliance
 - The monitor is unable to determine the non-profit/HUB is active, in good standing or connected to the ownership group as required in the LURA. This would also be cited for the non-profit/HUB failing to materially participate in property operations.
- Citation of Noncompliance Examples
 - **Reason:** Per the Land Use Restriction Agreement (LURA), throughout the compliance period, a Historically Underutilized Business (HUB)/Nonprofit, (insert name of HUB/Nonprofit), shall hold ownership interest in the Development. The Department was unable to confirm, that the HUB/Nonprofit is part of the ownership structure.
 - **Corrective Action:** Provide documentation, such as partnership agreements, to demonstrate the HUB/Nonprofit is part of the ownership structure.
 - **Reason:** The HUB/Nonprofit, (name of HUB/Nonprofit), must also maintain regular, continuous, and substantial participation in the development and operation of the Project. The Owner did not provide evidence of how the HUB/Nonprofit maintains regular, continuous and substantial participation in the development and operation of (insert name of Development).
 - **Corrective Action:** The Development must submit a statement of how (insert name of HUB/Nonprofit) maintains regular, continuous and substantial participation in the development and operations of the project.

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Issue of Noncompliance & References

- Issue of Noncompliance:
 - Failure to submit all or parts of the Annual Owner's Compliance Report
- Reportable on Form 8823 to the IRS?
 - Yes, if during the Federal Compliance Period for the HTC program and for Part A
- 8823 Audit Guide Chapter 7
- Texas Administrative Code Chapter 10, Subchapter F §10.607
 - Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (e) of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2023. The first report is due April 30, 2025, even if the Development has not yet commenced leasing activities.

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Failure to Submit All or Parts of the Annual Owner's Compliance Report

- Cause of noncompliance
 - The Texas Administrative Code, Title 10, Chapter 10, requires owners of multi-family rental developments administered by the Texas Department of Housing and Community Affairs (Department) to submit an Annual Owner's Compliance Report (AOCR). This report was due April 30, 2024, for the reporting year 2023.
- Citation of Noncompliance Examples
 - **Reason:** On May 6, 2024, A Notice of Noncompliance for Development Name was issued because Parts A, B, C and the Annual Owner's Financial Certification were not submitted by April 30, 2024, and a finding was assessed for Failure to submit all or parts of the Annual Owner's Compliance Report. To date, Parts of the AOCR and AOCF still have not been submitted. Corrective action was due on June 6, 2024.
 - **Corrective Action:** To correct, submit the missing part(s) of the report through the Compliance Monitoring and Tracking System (CMTS).

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Issue of Noncompliance & References

- Issue of Noncompliance:
 - Failure to submit quarterly reports as required by §10.607
- Reportable on Form 8823 to the IRS?
 - No, this is a state requirement
- Texas Administrative Code Chapter 10, Subchapter F §10.607
 - All Developments must submit a Quarterly Unit Status Report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences. Failure to report occupancy timely will result in a finding of noncompliance.

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Failure to Submit Quarterly reports as Required by §10.607

- Cause of noncompliance
 - The owner has failed to complete required Quarterly Vacancy Reports.
- Citation of Noncompliance Examples
 - **Reason:** The Development has failed to submit multiple quarterly reports.
 - **Corrective Action:** Submit the most current report, the Department will check the Compliance Monitoring and Tracking (CMTS) system to determine compliance.

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Issue of Noncompliance & References

- Issue of Noncompliance:
 - Increased a household's rent more than one time during a 12-month period
- Reportable on Form 8823 to the IRS?
 - No, this is a state requirement
- Texas Administrative Code Chapter 10, Subchapter F §10.622
 - Owners are not permitted to increase the household portion of rent more than once during a 12-month period, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a federal housing program that requires such changes or the household transfers to a Unit with additional Bedrooms. If it is determined that the Development increases rent more than once in a 12-month period, the Department will require the Owner to refund or credit the affected household. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household.

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Increased a Tenant's Rent More Than Once During a 12-Month Period

- Cause of noncompliance
 - The owner may only increase a tenant's rent once in a 12-month period, doing this more than once will result in noncompliance.
- Citation of Noncompliance Examples
 - **Reason:** During the review, it was determined that the household in unit 987 had a rent increase more than once in the last 12 months. The rent was increased on 9/1/2024 and then again on 2/1/2025.
 - **Corrective Action:** Obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household. Submit the tenant election and appropriate documentation to demonstrate compliance.

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Issue of Noncompliance & References

- Issue of Noncompliance:
 - Failure to issue a notice of rent increase in accordance with §10.622
- Reportable on Form 8823 to the IRS?
 - No, this is a state requirement
- Texas Administrative Code Chapter 10, Subchapter F §10.622
 - If an Owner is increasing a household's rent \$75 or more per month, the Owner is required to provide the household a 75-day written notice of such increase, unless the Unit or household is governed by a federal housing program that allows for such a change. If an Owner increases the household's rent \$75 or more without providing a 75-day notice, any amounts in excess of \$75 per month must be refunded or credited to the affected household(s). The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In absence of a tenant election, a full refund check must be presented to the household.

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Failure to Issue a Notice of Rent Increase

- Cause of noncompliance
 - Notices of rent increases are required; in some cases, it is required that a longer notice is given due to the amount of the rent increase.
- Citation of Noncompliance Examples
 - **Reason:** During the review it was noted that the household in unit 123 received a rent increase on 03/01/2025. The increase exceeded \$75 and the notice to the tenant of the rent increase was less than 75 days.
 - **Corrective Action:** Please refund or credit the household \$50, the amount in excess of the \$75, per month from 03/01/2025 to current date. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In absence of a tenant election, a full refund check must be presented to the household. Submit the tenant election and appropriate documentation to demonstrate compliance.

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Thank you!



WE WILL NOT HAVE OFFICE HOURS DURING JULY AND AUGUST. We will be conducting a Lunch and Learn Series, please watch for those announcements. Office Hours will return in September.

compliance

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