



# Identifying and Correcting Noncompliance From a State Housing Finance Agency's Perspective

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Some of the most dreadful words to hear after a monitoring review or a physical inspection by your housing finance agency (HFA) is that your development has been cited with finding(s) of noncompliance. But as I often share with property staff and management, there is no need to panic. We are going to tell you where you went wrong and exactly how to fix it.

This information is provided in writing by the HFA after a monitoring review or physical inspection. In Texas, we call it a monitoring letter. The monitoring letter details the results of the monitoring review and/or physical inspection and gives guidance to correct the issue(s).

## **How does an HFA identify noncompliance?**

There may be different avenues by which an HFA identifies noncompliance at the property, and this will vary from state to state. Additionally, the events of noncompliance identified are also going to differ from one HFA to another.

In Texas, noncompliance is identified through either a monitoring review of low-income resident files or an inspection of the development, buildings and units. Noncompliance can also be found through the submission of the Annual Owner's Certification reports, which are a federal requirement due each year. Sometimes, noncompliance is brought to the attention of the HFA by residents through the complaints process.

In Texas, the three most common events of noncompliance found during a monitoring review that are reportable on the Internal Revenue form 8823 (Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition) are:

1. Household income above income limit upon initial occupancy
2. Owner failed to correctly complete or document tenant's annual income recertification
3. Gross rent(s) exceed tax credit limits

The most common causes of noncompliance are related to simple human error when reviewing low-income resident files. For example, findings cited under the category "household income above income limit upon initial occupancy" could be due to a change in rate of pay that was not taken into consideration when annualizing employment income; or it could be that income



verifications, such as pay stubs, were all dated more than 120 days prior to the date of the certification. Additionally, if assets were not verified and included in the calculation of the household's annual income, this could cause noncompliance.

These examples are far from exhaustive, and there are many other reasons an HFA may cite noncompliance under this category and others.

### **Once noncompliance is discovered, what is the HFA's responsibility to its stakeholders?**

In accordance with the 8823 Guidebook, an HFA must prepare and provide the owner with a report describing the issues of noncompliance. The letter may also identify administrative or technical assistance issues, make recommendations to improve future tenant files and maintain compliance, and provide guidance on how to correct noncompliance issue(s).

The HFA must also identify a corrective action period, up to a maximum of 90 days. With good cause and HFA approval, the corrective action period may be extended up to six months. In Texas, for instance, 90 days is the standard corrective action period, but other HFAs may have corrective action periods that are less than 90 days, depending on the type of noncompliance and the HFA's policies.

### **What is the stakeholder's responsibility to the HFA?**

Once a monitoring letter/notice of noncompliance has been issued by the HFA, the countdown begins. HFA staff spends a lot of time drafting these letters to detail what category of noncompliance is being cited, the reason noncompliance was cited and how the noncompliance can be corrected.

Step one to correct noncompliance is to fully read, not scan, the letter that has been issued. Often an HFA is going to offer more than one option on how to correct noncompliance. After reviewing the letter, if you have questions on what is required to correct the noncompliance, reach out to your HFA as soon as possible within the corrective action period. In Texas, we welcome stakeholder questions and strive to provide the necessary guidance to help our partners correct findings of noncompliance.

Next, it is especially important that whatever documentation was requested in the letter be provided no later than the end of the specified corrective action period. If you want to submit some type of alternative documentation that you believe will also correct the noncompliance, it is again recommended that you contact your HFA staff and have that conversation before submitting something that may not correct the issue. It is advantageous to the owner of the property to submit the "right corrective action documentation" the first time and no later than the end of the corrective action period.



Lastly, if a finding of noncompliance cannot be corrected during the corrective action period, the owner should request an extension and submit a plan to correct. The plan should outline the reason the finding cannot be corrected during the corrective action period, what steps will be taken to remedy the finding of noncompliance, and how long it will take to correct the issue. This will demonstrate to the HFA that the owner has a plan and a timeframe to correct.

If you have submitted corrective action documentation for a finding of noncompliance and have not received correspondence acknowledging correction in a reasonable amount of time, it is your responsibility to contact your HFA to ensure that no further documentation is required.

**When preparing your corrective action response to the HFA, here are some useful tips:**

1. Submit a written cover page outlining your response to each finding and detailing what is being submitted.
2. Make sure the response is organized; it is recommended that the responsive documents be in the same order as the findings were written.
  - a. Use a coversheet to differentiate each finding, regardless of whether the response is submitted electronically or in paper form.
3. If you are submitting resident files, make sure each file is in consistent order and each form is facing up and legible.
4. Before submitting documents, whether in electronic or paper format, review to ensure all required documents are present and facing in the same direction. Also, confirm each document is clear, complete and legible.
5. Provide contact information for the person you want the HFA staff to contact if they have any questions about the corrective action submitted.

As an HFA staff member who has worked in a compliance monitoring division for more than 20 years, my advice to stakeholders is to ask questions, seek guidance and technical assistance when needed, and build professional relationships with the monitoring staff in your state. In conclusion, here are some recommended practices for avoiding noncompliance for file and inspections:

- Be prepared for a file and/or inspection review; only 15 days' notice will be provided.
- Be familiar with your state's compliance manuals, rules, statutes, website and the 8823 Audit Guide.
- Read and understand your property's Land Use Restriction Agreement (LURA)/Extended Use Agreement.
- Attend your state's training opportunities.
- Have written policies and procedures.



- Ensure all resident files are set up and maintained in the same consistent order.
- Avoid correction fluid.
- Do not backdate documents.
- Have a peer review of your resident files and make corrections prior to any review.
- Ensure staff understands the Uniform Physical Conditions Standards (UPCS) inspection protocol.
- Ensure all residents are notified 48 hours in advance before the inspection date.
- Have all inspections certificates available and up to date for elevators, fire protection sprinkler systems, fire extinguishers, boilers etc.
- Ensure all smoke detectors are operable.
- Ensure residents understand not to block any windows causing egress issues.

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