

Compliance FAQs

Q. Can I charge for carports, garages, storage or other amenities and facilities for a Housing Tax Credit Development (HTC) that is no longer in the Compliance Period?

A. During the Compliance and Extended Use affordability periods, Owners may not charge fees for amenities and facilities if the costs of facilities are included in the Development's Eligible Basis. If costs were not included in Eligible Basis and the charges are optional, fees may be charged in addition to the rent; i.e., they are not included in the rent computation. (see [Treasury Regulation 1.42-11](#) and the [IRS Guide for Completing IRS Forms 8823](#), Chapter 11).

Q. Are refundable fees and required tenant costs included in the rent calculation?

A. Cost of services that are required as a condition of occupancy, such as renter's insurance must be included in the gross rent calculation. Refundable fees, such as deposits are not included in the rent calculation. Note: Fees for preparing a unit for occupancy must not be charged; Owners are responsible for physically maintaining units in a manner suitable for occupancy. (see [Treasury Regulation 1.42-11\(a\)\(3\)](#) and the [IRS Guide for Completing IRS Forms 8823](#), Chapter 11).

Q. What can be included in the charge for an application fee for a HTC Development?

A. Application fees may be charged to cover the actual cost of checking a prospective tenant's income, credit history, and landlord references. The fee is limited to recovery of the actual out-of-pocket costs. No amount may be charged in excess of the average expected out-of-pocket costs of checking tenant qualifications at the project. Developments may add \$5.50 per unit for their other out of pocket costs, such as the amount of time development staff spends checking an applicant's income, credit history, and landlord references for processing an application, without providing documentation. (see [IRS Guide for Completing IRS Forms 8823](#), Chapter 11 and §[10.622\(c\)\(1\)](#)).

Q. What can be included in the charge for an application fee for a Multifamily Direct Loan (MFDL) Program?

A. Application fees may be charged that are reasonable. However, only an application fee may be collected at application. Developments with MFDL funding cannot collect an application deposit.

Q. I am a new Owner. What are some steps I can take to help ensure compliance is maintained throughout the Development's Affordability period?

A. Some helpful things to know or do as a new Owner:

1. Sign up for the TDHCA ListServ on the Department website here:

<http://maillist.tdhca.state.tx.us/list/subscribe.html?lui=f9mu0g2g&mContainer=2&mOwner=G382s2w2r2p> in order to receive new information and updates from the Department.

2. View and/or attend Department training by visiting the Department website here:

<https://www.tdhca.state.tx.us/pmcomp/COMPtrain.html>. Some Compliance webinars currently found on the Department website or the Department's YouTube Channel are:

- Income Determination: https://www.youtube.com/watch?app=desktop&v=6pL_rvn7Hrl&t=97s
- Multifamily Direct Loan: <https://www.youtube.com/watch?app=desktop&v=ekacmp79f64>
- Utility Allowance: <https://www.youtube.com/watch?app=desktop&v=Uj1atLo10Yc>

3. Refer to the Compliance Manuals and Rules section of the Department website found here:

<https://www.tdhca.state.tx.us/pmcomp/manuals-rules-htc.htm> for program guidance.

4. Update the Contact information in CMTS to ensure that you receive automated notices from TDHCA staff when new correspondence is uploaded to the system for your review.

5. Regularly check the "Attachments" section of CMTS in case you accidentally miss an automated notice from TDHCA. Spam filters sometimes catch automated notices.

6. Calendar TDHCA reporting deadlines and deadlines associated with TDHCA's compliance reviews. If a good cause extension is needed, it must be requested before the deadline expires.

Q. I missed a compliance monitoring or inspection deadline, what should I do?

A. Contact the compliance monitor or inspector who handled the review and submit corrections immediately. If you miss a deadline, Compliance will refer your property to the Department's Enforcement Committee for possible administrative penalties and/or debarment. However, many referrals can still be closed without enforcement action if you submit complete corrections immediately, before an informal conference notice is issued. If you are unable to submit corrections, we recommend that you submit a plan for consideration explaining:

- (1) Why the finding occurred,
- (2) How future findings of that type will be prevented, and

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(3) Your plan for resolution, including a timeline for completion.

Even if your referral cannot be closed, your fast reply to the referral would be taken into consideration by the Enforcement Committee. Also, remember that repeated referrals for a property or a development group can lead to a mandatory debarment, so it is vital to use TDHCA's compliance reviews to modify your internal policies and prevent future violations of the same type.

Q. How does the Department determine what I need to do to correct an IRS reportable issue of noncompliance for HTC Developments?

A. The Department utilizes the [IRS Guide for Completing Form 8823](#) to determine the required corrective action for any reportable issue of noncompliance for HTC Developments.

Q. What will monitors need during an onsite visit?

A. Generally, 1 to 3 people will perform the onsite review. Please prepare a space with some privacy that can accommodate files and working area for, on average, 2 people and provide table(s), chairs, and electrical plugs.

Q. Are files required to be maintained in a certain document order?

A. No, the Department does not require files to be organized in a specific order; however, a *Suggested File Checklist* is available under Monitoring Forms on the Department website here: <https://www.tdhca.state.tx.us/pmcomp/forms.htm>.

Q. Are there forms that must be TDHCA (Department) specific?

A. At initial certification, the use of the Department's Income Certification form (found on the Department website under Compliance Forms for Multifamily Properties: <https://www.tdhca.state.tx.us/pmcomp/forms.htm>) is required, unless the Development also participates in the Rural Development or a Project Based HUD Program, in which case, the other program's Income Certification form will be accepted. Annually thereafter, either the Department's Annual Eligibility Certification (also found at <https://www.tdhca.state.tx.us/pmcomp/forms.htm>) or Income Certification form must be used, unless layered with Rural Development or a Project Based HUD Program, in which case, their form will be accepted.

Q. How does a model unit affect the applicable fraction for a building?

A. The model unit can be included in eligible basis and in the denominator of the applicable fraction. It would not be counted in the numerator, unless occupied by a qualified low income household.

Q. How is an exempt unit treated?

A. For the Housing Tax Credit Program, an exempt unit is allowable in 100% low income building as per Section 42, the unit is removed from both the numerator and denominator of the applicable fraction. For Developments that have 100% MFDC assisted units, exempt units are not allowable unless approved by the Department and the HUD Field Office.

Q. What are the requirements of an exempt unit?

A. For the Housing Tax Credit Program, an exempt unit must be in a 100% low income building and must be for full time Manager, Maintenance employee or a Security Officer of the Development. For 100% MFDC assisted developments, the HUD Field Office must approve a conversion of one unit, if cost allocation permits and if the PJ determines the conversion will contribute to the stability of effectiveness of the development.

Q. How will a HTC Development be monitored, once the Compliance period has been completed?

A. The Texas Administrative Code details the monitoring procedures in [§10.623](#); here are some notable points:

- 1) The frequency and depth of monitoring will be determined based on risk
- 2) Households must be income qualified upon initial occupancy of any Low Income Unit
- 3) Rents will remain restricted for all HTC Low-Income Units as well as all additional income and rent restrictions defined in the LURA remain in effect
- 4) Physical Inspections will continue to be performed every three years

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Q. My LURA requires the material participation of a nonprofit or Historically Underutilized Business (HUB). Does the Department monitor for this?

A. Yes. TDHCA staff will verify:

- 1) Status for a nonprofit, via the Texas Secretary of State ("TX SOS") at: <https://direct.sos.state.tx.us/acct/acct-login.asp>. For a HUB, via the Texas Comptroller at: <https://mycpa.cpa.state.tx.us/coa/search.do?userType=public>. If there is a HUB requirement, Staff recommends keeping evidence of HUB qualification on site.
- 2) The required entity is part of the ownership structure, via the TX SOS website indicated above. Staff also recommends keeping evidence on site.
- 3) The required entity is in good standing, via the TX SOS website indicated above.
- 4) The required entity is materially participating. If a representative for the entity is not present for the onsite review, keep a letter on site regarding how they materially participate.

Q. My LURA requires that a Community Housing and Development Organization (CHDO) participate at the Development?

A. If the development received funds after August 23, 2013, TDHCA staff will verify:

- 1) Status via the Texas Secretary of State ("TX SOS") at: <https://direct.sos.state.tx.us/acct/acct-login.asp>.
- 2) The required entity is part of the ownership structure, via the TX SOS website indicated above. Staff also recommends keeping evidence on site.
- 3) The required entity is in good standing, via the TX SOS website indicated above.

Q. What informational sources are available to Owners regarding the implementation of supportive services?

A. Information regarding monitoring requirements can be found in the Department Texas Administrative Code [§10.619](#). A webinar explaining how to identify and properly implement supportive services can be found on the Department website here: <https://www.tdhca.state.tx.us/av/pmc/120822-SupportiveServices.wvx>. The "Social Services" tab of the Monitoring Forms spreadsheet provides details regarding how we monitor for them. It can be found on the Department website under Compliance Forms for Multifamily Properties, Monitoring Forms here: <https://www.tdhca.state.tx.us/pmcomp/forms.htm>.

Q. What documentation should be maintained to evidence services are being provided?

A. It is recommended to keep a binder in the property office to maintain calendars, flyers and sign in sheets, organized by service type. Maintain these records even if nobody attends the service.

Q. My LURA includes social supportive services that I am unable to provide or that residents do not attend. Can I skip them?

A. No. Social supportive services must be provided, if required by your LURA. If you cannot provide all services required by the LURA or if they are not appropriate for your property, it is the Owner responsibility to request a material LURA amendment. See policy for LURA amendments in the TDHCA Asset Management Post Award Activities Manual found here: <https://www.tdhca.state.tx.us/asset-management/pca-manual.htm>

Q. I have HOME, TCAP RF, or NHTF funding through the Department's Multi-Family Direct Loan program, do I have a requirement to provide supportive services?

A. You may have a requirement to provide supportive services for these funding sources. Your Land Use Restriction Agreement (LURA) will outline if you have this requirement and what services are to be required.

Q. If I have the requirement to provide services in the HOME, TCAP RF and NHTF Land Use Restriction Agreement (LURA), will the Department monitor that these services are being provided?

A. Yes, the Department will monitor for compliance with the supportive service requirement outlined in the LURA at each of your onsite monitoring reviews.

Q. Do I need TDHCA permission to sell my property?

A. Yes. All changes to any member of the Development Owner, except the limited partners under the syndicator, must be approved in advance by TDHCA. Ownership transfers will be processed according to the requirements in the most recently approved Qualified Allocation Plan. You must submit the necessary Ownership Transfer Forms found on the Department website here:

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<https://www.tdhca.state.tx.us/asset-management/pca-manual.htm> along with a \$1,000 processing fee. Failure to receive TDHCA approval before finalizing a transfer may result in a penalty assessment. See the TDHCA Asset Management Post Award Activities Manual found here: <https://www.tdhca.state.tx.us/asset-management/pca-manual.htm>.

Q. How and when is the Foreclosure Notice used? Where is the form located?

A. Within thirty (30) days after a foreclosure, the Department must be provided with documentation evidencing the foreclosure, a rent roll establishing occupancy on the day of the foreclosure and the Foreclosure Notice which can be located on the Department's website under Notices and Request Forms here: <https://www.tdhca.state.tx.us/pmcomp/forms.htm>.

Q. What are Safe Harbor reviews? How are they conducted?

A. When a Land Use Restriction Agreement (LURA) is terminated, all of the requirements are extinguished with two (2) exceptions that provide protections for the low income households residing at the property on the date of the LURA termination. These two (2) protections are the rent restrictions of the Housing Tax Credit program and the prohibition of eviction for other than good cause. The Department will conduct a Safe Harbor review within the three (3) year safe harbor period by notifying the current Owner of the review and requesting documentation to be submitted. The Department does not anticipate any need to come onsite to review files or records. However, if we do not receive the requested information or are not able to confirm compliance, an onsite review will be necessary.