Monitoring Reviews: Beginning to End

2022

# **Department Contact Information**

# **Physical Address:**

221 East 11<sup>th</sup> Street Austin, Texas 78701

# **Mailing Address:**

P.O. Box 13941 Austin, Texas 78711

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Website: www.tdhca.state.tx.us

# **Contact Information and Why it Matters**

- Notification of on-site reviews are only uploaded to the Compliance Monitoring and Tracking System (CMTS).
- Management should be checking CMTS attachments regularly, but also need to (1) verify in CMTS to ensure that all of the contact information entered there is correct (particularly the email addresses), and (2) ensure that the "owner" contact is an owner contact and not property management or management company contact.
- Management needs to receive the automated email notices, however, it is vital for the owner to also receive notices since the owners are ultimately responsible for any noncompliance.
- The owner is the one who would be subject to administrative penalties and/or debarment for noncompliance, so they need to receive and review notices, and supervise corrections by management.

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# **The Monitoring Review**

- The lead monitor will upload a notification letter into the CMTS Attachment System for the development.
  - The letter will indicate a date and time monitor(s) will be at the development. Please keep in mind that this is an estimate. If the prior review(s) finish, or do not finish, when anticipated, monitor(s) may arrive sooner or later.
- Monitor(s) will conduct the review, either desk or on-site, in accordance with the program(s) requirements under which the property operates.
- Monitor(s) will then issue a Monitoring Report which will detail any issues of noncompliance and offer technical assistance on items that may help avoid noncompliance in the future.
- There is a 90-day Corrective Action Period in which the issues can be corrected. This can be extended for good cause for an additional 90 days, written approval is required for this extension and the request must be submitted prior to the end of the original Corrective Action Period.

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# The Monitoring Review: Pre-Review

- The notification letter will provide a deadline to submit pre-onsite documentation; the due date is incredibly important because of the 15-day notification window.
- Once submitted, the monitor will prepare for the review using the documentation submitted, along with the Land Use Restriction Agreement (LURA) and other available items.
- The monitor(s) will arrive at the property for the monitoring review, or the monitor will upload a file request list into the CMTS Attachment System and provide on-site staff with a file list for the review.
  - If the review is being conducted as a desk monitoring review, the number of files expected to be uploaded will be given in the letter, if the upload cannot be completed within 24 hours of the notification, the monitor must be notified to make plans to split up the file list to allow the upload to be completed timely.



# The Monitoring Review: The Actual Review

- If this is a Desk Monitoring Review, the development will have 24 hours from the time of the file request to upload the tenant files. The monitor will review the files timely from their computer rather than at the property.
- The monitor(s) will need a space to set up their laptops, near electrical outlets, and review the files. The lead monitor will provide the file request at this time.
- While the monitor(s) are setting up, the on-site staff should pull tenant files and take them to the monitor(s) so that the review can begin and end timely.
- The monitor(s) will review the tenant files provided and any additional documents requested at the time of the review.

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# The Monitoring Review: End of the Review

- The lead monitor will conduct an Exit Interview.
- The Exit Interview will not include specific issues of noncompliance; however, the monitor will go over the general strengths and weaknesses of the files.

# The Monitoring Review: After the Review

- A final review of all the documents and checklists will be conducted. This
  review includes any pre-onsite area that was not fully reviewed prior to the
  actual monitoring review, a review of the tenant checklists and any area of
  identified noncompliance to ensure accuracy.
- The lead monitor will write a Monitoring Report to address any noncompliance found during the review. This letter may also offer Technical Assistance that will be helpful in avoiding future noncompliance.
- If the owner or owner's representative has questions about the Monitoring Report, please reach out to the monitor sooner, rather than later, to get any questions answered. If the development staff would like a detailed Exit Interview (after reading the full Monitoring Report and Detailed Noncompliance Report), this would be the time to ask for it.

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# Review Closed! No Events of Noncompliance! Monitoring Letter Issued

# **The Monitoring Report**

# Types of Monitoring Reports

- No Issues of Noncompliance and No Technical Assistance: this type of report indicates that the monitors did not identify any area of noncompliance during the review.
- No Issues of Noncompliance with Technical Assistance: this type of report indicates that the monitors did not identify any area of noncompliance during the review, but did note items that could become future areas of noncompliance if they are not addressed.
- Events of Noncompliance and Technical Assistance; this means that there were issues of noncompliance identified during the review, along with some noted items that the monitor wanted to further address. This letter will come with a Detailed Findings Report to explain what the issue is and how to correct it.

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# **The Monitoring Report: No Findings**



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If a "No Issues" of noncompliance report is issued after the monitoring review, then there will not be anything further to do.

The letter will let staff know what programs were monitored, on what date, by whom and what tenant files were reviewed. Page 2 of the letter will also indicate if there is any Technical Assistance offered from the review.

Reach out to the lead monitor with any questions.

# The Monitoring Report: Technical Assistance

Reasons for Technical Assistance (TA):

- Changes to the program rules/requirements that are being noted in TA
- Issues that could become future areas of noncompliance if they are not addressed
  - If these items are still an issue at the next review they will most likely be cited as noncompliance, please make adjustments when needed based on TA
- Imperfect documentation
  - If the monitor is able to determine that the household is eligible, but imperfect documentation was used, i.e. activity print outs instead of bank statements, to qualify the household but the file contains enough information to determine eligibility that the monitor did not cite noncompliance.
- Details that will further explain the issues of noncompliance on the Detail Findings Report
- Anything else the monitor wants to make the owner aware of from the review

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# The Monitoring Report Flow: Issues of Noncompliance Monitoring Letter Issued Issues of noncompliance... Corrective Action Period identified 90 days Can be extended up to 6 months For good cause Approval is needed Will explain type, reason and specific corrective action required

# The Monitoring Report: Issues of Noncompliance, Pages 1 & 2



If the monitor issues a report that indicates there are issues of noncompliance after the monitoring review, then there will be more steps to complete. Pages 1 & 2 of this letter are informational in content and should be reviewed.

- Please supply all requested documentation no later than the specified Corrective Action Due Date, which is the last day of the corrective action period.
- If an extension to correct the event(s) of noncompliance is needed, please send an email request prior to the end of the Corrective Action period outlining the extension and reason to compliance.extensionrequest@tdhca.state.tx.us.
- The Department recommends submitting a cover letter explaining the
  documentation submitted to address each event of noncompliance.
  Upload the corrective action to the Electronic Document Attachment
  system using the development's Compliance Monitoring and Tracking
  System (CMTS) account.
- Any Outstanding Noncompliance issues from past reviews will be outlined and the findings report from that review will also be attached to this letter.

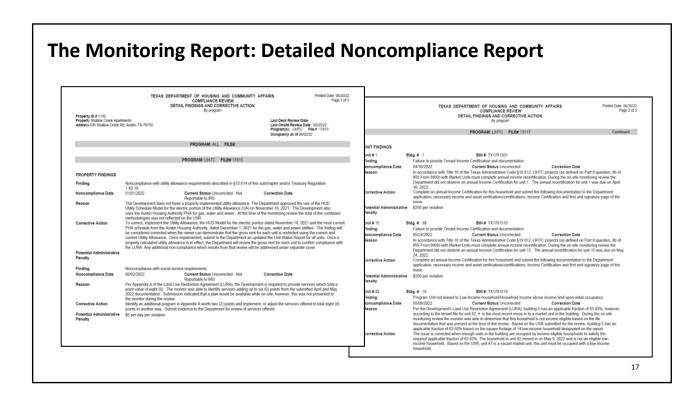
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# The Monitoring Report: Issues of Noncompliance, Pages 3+



If the monitor issues a report that indicates there are issues of noncompliance after the monitoring review, pages 3+ (length of letter will depend on the number of findings and any Technical Assistance offered):

- This will tell the owner when the review was conducted, and the names of the monitors that were present for the review.
- In this section, events of noncompliance cited will be listed and, if any, what units were affected by the issues.
- This section will outline and detail technical assistance, if any, that
  the monitor identified during the review. This is also some of the
  information that might be provided during an on-site Exit Interview.
- The files reviewed will be listed.
- The last section offers some additional resources and links that are useful to all parties in connection with the Affordable Housing Programs that are monitored by the Department.
- The pages following this will detail the findings listed in the Report.



### **How to Read the Detailed Noncompliance Report** Einding Noncompliance with utility allowance requirements described in §10.614 of this subchapter and/or Treasury Regulation 1 42-10 Noncompliance Date 01/01/2022 **Current Status** Uncorrected - No. Correction Date The Development does not have a properly implemented utility allowance. The Department approved the use of the Utility Schedule Model for the electric portion of the Utility Allowance (UA) on November 18, 2021. The Development also uses the Austin Housing Authority PHA for gas, water and sewer. At the time of the monitoring review the total of the combine methodologies was not reflected on the USE Corrective Action PHA schedule from the Austin Housing Authority, dated December 1, 2021 for the gas, water and sewer utilities. The finding will be considered corrected when the owner can demonstrate that the gross rent for each unit is restricted using the correct and current Utility Allowance. Once implemented, submit to the Department an updated the Unit Status Report for all units. Once a properly calculated utility allowance is in effect, the Department will review the gross rent for each unit to confirm compliance the LURA. Any additional non-compliance which results from that review will be addressed under separate cover Potential Administrative Penalty

The Detail Findings Report will outline the specifics of each issue of noncompliance, the noncompliance date, status (reportable if under the HTC program), the correction date, if applicable, the reason for the issue of noncompliance and the corrective action required to fix the issue of noncompliance. If there are questions the owner or owner's representative should reach out to the issuing monitor sooner, rather than later.

# **Corrective Action**

The Monitoring Report will indicate a Corrective Action Period of 90 days from the date of the letter.

- Please supply all requested documentation no later than said date, which is the last day of the corrective action period.
- If clarification is necessary to complete the corrective action, contact the issuing monitor as soon as possible.
- The Department may have the ability to extend the corrective action period for a total of six months, but only if there is good cause and a request is received prior to the end of the corrective action period. If an extension to correct the event(s) of noncompliance is needed, please send an email request prior to said date to compliance.extensionrequest@tdhca.state.tx.us.
- The Department recommends submitting a cover letter explaining the documentation submitted to address each event of noncompliance.

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## Corrective Action: How to Submit CA

How to submit Corrective Action:

- Upload the corrective action to the Electronic Document Attachment system using the development's Compliance Monitoring and Tracking System (CMTS) account.
  - This must be completed before the end of the 90 day Corrective Action Period, or by the deadline in the extension, if one is granted.
  - For instructions on how to use the attachment system, please see Attaching Documents to CMTS found on the Department's website. To access, on the home page, select "Support and Services" tab; then select "Compliance". From the submenu, select "Online Reporting".
- Failure to submit complete and satisfactory corrections on or before the corrective action deadline will result in a referral to the Department's Enforcement Committee.

# Corrective Action: What if 90 days is not enough?

What if 90 days and an extension are not enough time to correct?

- Upload a detailed corrective action plan to the Electronic Document Attachment system using the development's Compliance Monitoring and Tracking System (CMTS) account.
  - This must be completed before the end of the 90 day Corrective Action Period, or by the deadline in the extension, if one is granted.
- The detailed corrective action plan should include what will be done to correct the issue of noncompliance, how long will it take and when the owner anticipates completion of the corrective action and submission of the documentation to evidence completion.
- While a corrective action plan will prevent the referral, it will not prevent the issuance of the 8823s for Tax Credit Communities.

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# **Corrective Action: CA Review**

How the Department will review Corrective Action:

- The Department will review the submission of CA and issue a response accordingly.
  - If all issues of noncompliance are corrected by the submission, a close-out letter will be issued, and no further action is required.
  - If all issues of noncompliance are addressed, but not corrected, by the submission, the Department will issue a 10-day letter, allowing the development an additional window of time to completely correct the issues of noncompliance.
    - If the submission does not address an item of noncompliance, a 10-day allowance cannot be given.
  - If no response is received, the Department will issue a letter referring the development to the Enforcement Committee.
  - If the CA submission, either initially or within the 10-day window, does not fully correct the issues of noncompliance cited under the monitoring review, the Development will be referred to the Enforcement Committee.

# **Corrective Action: Enforcement Action**

Suggestions to help avoid Enforcement Action:

- Make sure that the development is meeting all calendar reporting deadlines:
  - Quarterly Vacancy Reporting due the 10<sup>th</sup> of every January, April, July, October
  - Annual Owners Compliance Report due every April 30th for the year prior
- Check CMTS regularly to ensure that TDHCA correspondence is not accidentally missed, and that any file or UPCS deadlines are calendared and adhered to.
- Failure to resolve noncompliance within the corrective action period will result in referral for an administrative penalty and/or debarment, per 10 TAC Chapter 2, which was amended in 2021.
- Important note: 10 TAC §2.401(e)(2)(A) now calls for mandatory debarment for responsible parties with a referral ratio of 50% or more of actively monitored developments being referred to the Enforcement Committee on or after 4/1/2021.

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# Corrective Action: Enforcement Action cont.

If a property is referred to the Enforcement Committee, Owners shouldn't ignore the referral or wait for legal to contact them. The best thing for the Owner to do after getting notice of penalty referral is to immediately talk to the management/compliance company:

- Contact the referring monitor and Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us via email to explain what happened,
- Upload complete corrections into CMTS,
- Complete the "Owner Acknowledgment of Referral" that will be uploaded as a separate line item in CMTS with the referral letter. This must be completed by the Owner and not an owner representative, and
- Adjust internal management policies to ensure that similar referrals do not occur again.

Taking these steps immediately could help the owner avoid penalty action in many cases.

# **Enforcement Action: Owner's Acknowledgement**

The Owner's Acknowledgement of Referral is a new form that is required as part of any referral:

- The "Owner Acknowledgment of Referral" that will be uploaded as a separate line item in CMTS with the referral letter.
- This form must be completed by the Owner and not an owner representative.
- This form is required as a result of the requirement for debarment for an entity with a referral ratio of 50% or more.
- CMTS must be current and correct with the ownership entity contact information, this will allow the group to be notified of any correspondence from the Department.

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## **Corrective Action: Debarment**

# Tips for avoiding penalties or debarment

- Technical Support for Avoiding Administrative Penalty Referrals has been compiled to help owners avoid an administrative penalty or debarment referral. It includes useful tips and guidance to help maintain compliance. It is not all-inclusive and it remains the owner's responsibility to be aware of all applicable TDHCA statutes, TDHCA rules, and LURA terms.
  - The Technical Support document can be found online at https://www.tdhca.state.tx.us/pmcomp/index.htm.
- It is vital that owners and management groups proactively edit their internal management policies and take all necessary actions to ensure complete and timely compliance since failure to do so could cause the owner to be debarred if too many (a referral ratio of 50% or more) properties in the portfolio are referred. The above link should help with this.
- There are levels of debarment, Compliance does not have any control over this, debarment is handled by the Enforcement Committee

# **Corrective Action: Previous Participation Review (PPR)**

- If anyone affiliated with the development submits an application for a new award/funds/or transfer a PPR will be conducted in accordance with §1.301 (for MF & Proposed Transfers requests) or §1.302 (for SF and CA funds).
- If there is a monitoring review open at the time a PPR is conducted that has reached the end of the designated corrective action period, the Department will review any CA submission uploaded to CMTS. A response will be issued to the development and the outcome taken into consideration by the PPR contact in their assessment.
  - There is typically a seven (7) day period for this review, so timely submissions and communication are essential.
- Noncompliance that was corrected after the applicable corrective action period and noncompliance that has not been corrected will be taken into consideration when conducting a PPR for a three (3) year period (starting on the date of correction).
- Monitoring reviews with Noncompliance corrected after the CAP will result in Events of Noncompliance during a PPR assessment; however, failure to submit any type of corrective action/response during the designated corrective action period (unresponsiveness) also plays a significant role in the PPR assessment.

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# **Notes for Success**

- Communication is key!
  - Make sure that CMTS has current and correct contact information for all parties!
  - Ask questions when given the opportunity while the monitor conducts the Exit Interview for the Monitoring Review.
  - Contact the monitor when the Monitoring Report is received after a review has been conducted if there are any questions.
    - Contact the monitor as soon as the letter is reviewed so that there are not any unnecessary delays.
- Read the Monitoring Report and Detailed Noncompliance Report carefully and completely. They may all look the same, but the information does change based on the development and the review, so reading the report fully is necessary.
- Respond to Monitoring Reports as required in order to avoid being referred unnecessarily.
  - As soon as the Monitoring Report is uploaded into CMTS, review the report internally and ask questions early-on so that you have the full 90 days to work on the Corrective Action response.
- Conduct a review of the Corrective Action response before submission. If the on-site staff puts together a response that is not reviewed by the owner and management group, it may result in undue delays in correcting the issues and an unnecessary referral.

# What happens if you do not agree?

Contact the Monitor and/or the Director of Compliance Monitoring

National Center for Housing Management (NCHM)

Internal Revenue Service (IRS)

HUD Field Office

- Income/Asset
Inclusion/Exclusions

HTC Specific Program concerns

MFDL Specific Program concerns

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# **THANK YOU!**

Key to Success: Reach out to the monitor that issued the Report.

MANUALS & RULES

HTTPS://WWW.TDHCA.STATE.TX.US/PMCOMP/MANUALS-RULES-HTC.HTM

TRAININGS AND PRESENTATIONS

HTTPS://WWW.TDHCA.STATE.TX.US/PMCOMP/PRESENTATIONS.

