



The Power of Our Voices



Advanced Tax Credit Compliance



Tax Credit Compliance and Common Errors

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"BIG 3"

1 - Low-Income Units

- Were the units occupied by qualified low-income households?

Qualified Low-Income Household (Tenant Income Certification)

- Complete – income sources and amounts, self-certifications, verifications
- Household composition
- Timely – concurrent to move-in
- Tenant signed certification
- **Secure confidential information**
- **Correct income limit for year**

Common Errors

- Not reading and reviewing State Agency compliance procedures
 - Move in requirements may be different than annual requirements

Common Errors

- Not making sure application and other documents are complete
 - Unanswered questions
 - Incomplete information on form
 - Applicant/tenant name, unit #, etc.
 - Inconsistent information

Common Errors

- Rushing through the interview
 - Is information consistent

Common Errors

- Making assumptions
 - Not asking applicant/tenant all questions
 - Assuming applicants/tenants have no assets

Common Errors

- Not asking the right questions on verifications
 - Income vs. interest on assets

Verifying Income / Assets

- Acceptable methods of verifying information include Third Party Verifications, Review of Documents submitted by the resident (i.e. check stubs), and the resident certifications made under penalties of perjury.
 - HUD has new requirements but state agencies can over-rule those
- Third Party Verifications are the most preferred form of documentation.

Verifying Income / Assets

- Third party contacts are considered impossible if an employer does not respond, third party charges a fee, or no third party is available. Generally a third party contact is considered delayed if a response will not be received within two weeks, but can be less if it is determined that the third party will not respond.

Verifying Income / Assets

- Child Support:
 - When no documentation is available, the Owner may require the family to sign a certification stating the amount received. The certification must be notarized.
 - HUD now says that the owner can witness a Tenant's signature – what does your state agency say
 - A signed, sworn self-certification by a resident is sufficient documentation to show that a resident is not receiving Child Support.
 - A State Agency may require that an Owner obtain documentation, other than the statement described above, to support a resident's Annual Certification.

Common Errors

- Not getting forms signed and dated

Common Errors

- Attempting to force applicant's eligibility
 - Often caused because of vacancies or during rent up

Common Errors

- When have layered programs, trying to combine rules of all programs
 - Follow and apply each program rule separately

Common Errors

- Procrastinating on completing annuals

Common Errors

- Not reading documents received
 - i.e. credit report
 - Mortgage?
 - Amount of payments
 - Apply common sense
 - Do amounts and information match

Common Errors

- Your file doesn't tell a story
 - Can anyone understand
 - Do you show your calculations
 - Is the story easy to read

2 - Rents Restricted

- Maximum gross rent based on income limits
- Computation of utility (timely updates)
- **Fees charged and included in rents**
- **Fees for services in addition to rent**
- Rent subsidy programs

Changes in the Utility Allowance

- If the applicable utility allowance or the local utility company estimate changes, the new utility allowance must be used to compute gross rent within 90 days after the change

Gross Rent Exceeds Tax Credit Limits

- Rent Computation:
 - Any charges to Low Income residents for services that are not optional generally must be included in Gross Rent.

Gross Rent Exceeds Tax Credit Limits

- Examples of non-optional fees, included in Gross Rent:
 - Renter's Insurance
 - Built in storage shed
 - Washer / Dryer hook ups
- Optional fees, not included in Gross Rent:
 - Laundry room equipment fees
 - Pet fees

Gross Rent (Maximum) Rents

- Can charge HUD tenant portion in excess of Tax Credit tenant portion as long as resident receives at least \$1 in subsidy
- If HUD Contract Rent is greater than Tax Credit Maximum Rent, you have a problem when you terminate assistance

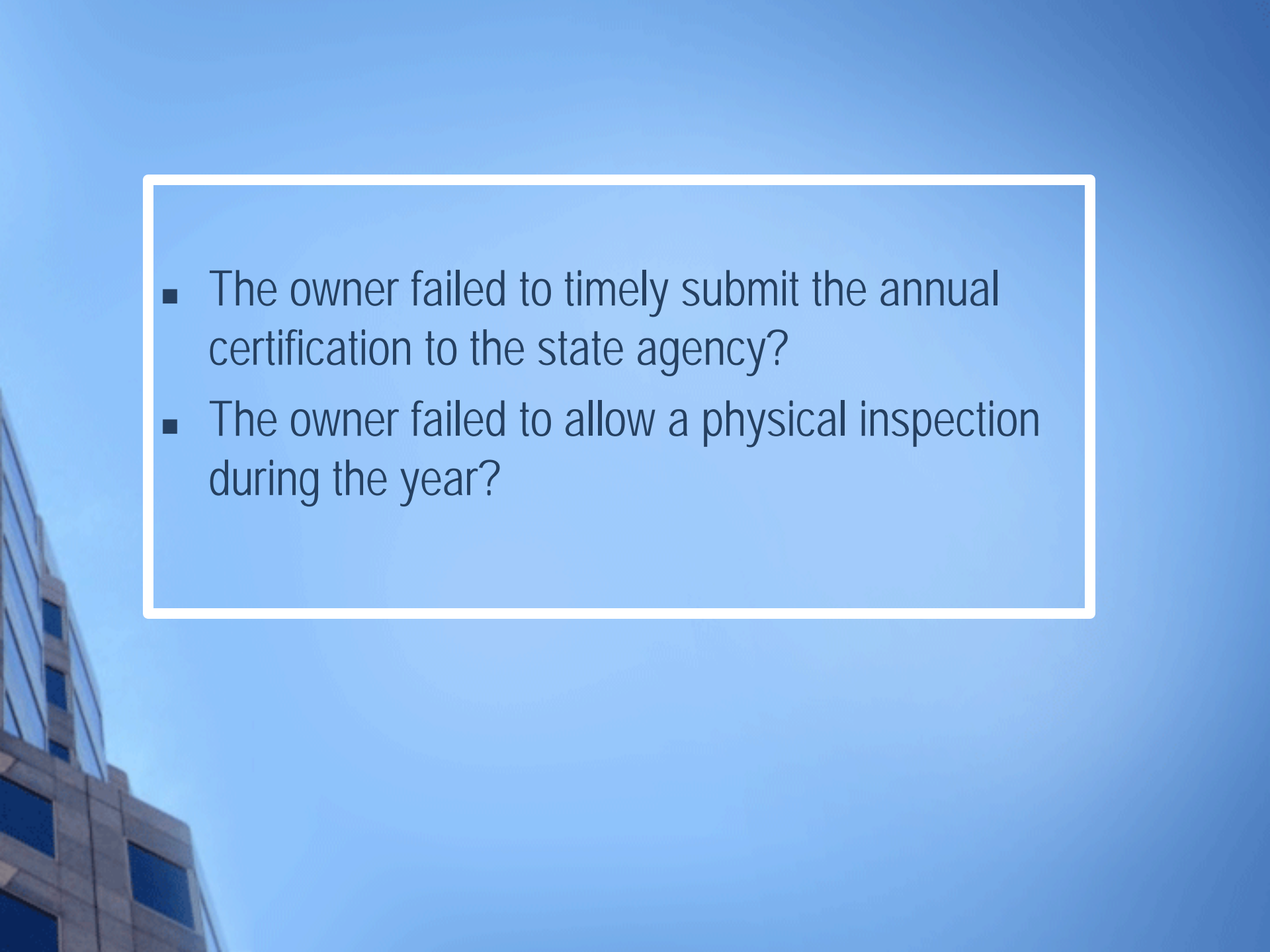
Gross Rent Exceeds Tax Credit Limits

- Overcharging Residents for rent in the first year of the Compliance Period can disqualify the Owner from claiming any credits.
- The 8823 Audit Guide indicates that an Owner can not avoid the disallowance of the Low Income Housing Credit by rebating excess rent to the affected Residents in any year of the Compliance Period.

3 - Was Housing Suitable for Occupancy (Units, Buildings and Grounds?)

- Inspection by state agency
- Physical inspection for another purpose
- Certify to state housing agency annually; timely and complete

What if.....

- 
- The owner failed to timely submit the annual certification to the state agency?
 - The owner failed to allow a physical inspection during the year?

Suitable for Occupancy

- Must be suitable for occupancy as required by all local, state & federal safety, building & health codes
- Management should conduct move in inspections, regularly scheduled annual inspection & move out inspections
 - Record in writing and place in household's resident file



SEVEN "Other" ISSUES

Issues

Can you document....

4. Compliance with the **Available Unit Rule** every time you rent a unit?
5. **On-going marketing** efforts to rent vacant units?
6. Compliance with the **Unit Vacancy Rule**?
7. Compliance with the **General Public Use**
8. Compliance with **Transient Use** requirements?
9. Compliance with the Student Rule
10. Correction of Non-Compliance

- Also known as the 140% rule
 - If an initially eligible household's income increases in excess of 140% of the qualifying income, this rule applies

Next Available Unit Rule

- Conditions to satisfy rule:
 - Unit must be kept rent restricted
 - Next available unit of equal or smaller size must be rented to qualified household

Next Available Unit Rule

Vacant Units

- When a qualified household vacates a unit, the unit will continue to maintain its position in the applicable fraction as long as the Vacant Unit Rule is being followed

Vacant Unit Rule

- Once a unit vacates, no unit of smaller or comparable size in the building can be rented to non-qualifying individuals
 - Vacant unit can maintain qualified status

- Must be available for the use by the general public
- Must rent unit in accordance with HUD's nondiscrimination policy

General Public Use

- Initial lease must be at least six-months
 - Renewal can be for any period
 - Exception for SRO
 - Initial lease can be month to month

Non-Transient Occupancy

Qualifying Student Households

- A unit is not considered to be occupied by qualified individuals if all the occupants of such unit are Full-time Students

Qualifying Student Households

- A unit is also considered out of compliance if the owner (or agent) fails to verify the household's student status at the time of move in, or an annual student status verification was performed late and after notification of a state agency review.

Qualifying Student Households

- IMPORTANT to know:
 - The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is attending.
 - Determination includes if a student for any number of days for 5 months of the calendar year.
 - Treas. Reg 1.151-3(b) further provides that the five calendar months need not be consecutive.

Qualifying Student Households

- There are exceptions to the rule. If a household meets an exception, the household would be considered qualified.

Qualifying Student Households

- Exception:
 - At least one student receives assistance under Title IV of the Social Security Act. (i.e. AFDC / TANF / Welfare Assistance)

Qualifying Student Households

- Exception:
 - Does at least one student participate in a program receiving assistance under the Job Training Partnership Act (JTPA), Workforce Investment Act, or under other similar federal, state or local laws?

Qualifying Student Households

- Exception:
 - Are the students married AND entitled to file a joint tax return?

Qualifying Student Households

- Example - newly married students:
 - A recently married full-time student couple is looking for housing. The couple is income qualified, but they have not yet filed their first tax return. Even if the couple does not file a joint tax return, they are still entitled to file a joint return and thus satisfy the exception under IRC 42(i)(3)(D)(ii)(II).

Qualifying Student Households

- Exception:
 - Is at least one student a single parent with child(ren) AND this parent is not a dependent of another individual AND the child(ren) is/are not dependent(s) of someone other than a parent?

Qualifying Student Households

- Exception:
 - Was at least one student was previously under the care and placement responsibility of the state agency responsible for administering Foster Care?
 - Does your state have an age limit

Qualifying Student Households

- A unit is out of compliance when it is occupied by full-time students at qualifying educational organizations for five or more months during a calendar year in which the taxable year of the taxpayer begins AND who do not meet of the exceptions identified.

Qualifying Student Households

- Back in Compliance...

The unit is back in compliance when is no longer occupied entirely by full-time students or the tenant qualifies under one of the exceptions under IRC Section 42(i)(3)(D).

Remember

1. Standard of "sufficiency"
2. Documentation for business purposes should be sufficient for IRS audits – states may have stricter requirements
3. Documentation can serve multiple purposes
4. Some IRC 42 requirements require specific and unique documentation
5. Prepare documentation concurrent to the event.
6. Corrections/updates should be identifiable

Guidelines for Determining Noncompliance

- The State Agency is responsible for reporting whether Owner are compliant with IRC 42 and its regulations.
- At least once every three years, a minimum of 20% of all Low Income Housing Credit Resident files and units must be reviewed by the State Agency.
- In the event that extensive noncompliance is identified, State Agencies should consider expanding the number of units inspected & files reviewed beyond the 20%.

Guidelines for Determining Noncompliance

- In many instances, the 8823 Guide states that if noncompliance is discovered and corrections are made prior to notification of the State Agency's audit, it will not be considered noncompliance.
- Audits should be done periodically to discover and correct noncompliance items.



Thank You!

FOR YOUR ATTENTION