

Understanding and Avoiding Recapture

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Form 8823
 (Rev. June 2011)
 Department of the Treasury
 Internal Revenue Service

**Low-Income Housing Credit Agencies
 Report of Noncompliance or Building Disposition**

OMB No. 1545-0048
 Check here if this is an amended return

1 Building name (if any). Check if item 1 differs from Form 8809 **IRS Use Only**

Street address

City or town, state, and ZIP code

2 Building identification number (BIN)

3 Owner's name. Check if item 3 differs from Form 8809

Street address

City or town, state, and ZIP code

4 Owner's taxpayer identification number EIN SSN

5 Total credit allocated to this EIN \$

6 If this building is part of a multiple building project, enter the number of buildings in the project

7a Total number of residential units in this building

b Total number of low-income units in this building

c Total number of residential units in this building determined to have noncompliance issues

d Total number of units reviewed by agency (see instructions)

8 Date building ceased to comply with the low-income housing credit provisions (see instructions) (MM/CC/YYYY)

9 Date noncompliance corrected (if applicable) (see instructions) (MM/CC/YYYY)

10 Check this box if you are filing only to show correction of a previously reported noncompliance problem

11 Check the box(es) that apply:

	Out of compliance	Noncompliance corrected
a Household income above income limit upon initial occupancy	<input type="checkbox"/>	<input type="checkbox"/>
b Owner failed to correctly complete or document tenant's annual income reverification	<input type="checkbox"/>	<input type="checkbox"/>
c Violator(s) of the LPHC or local inspection standards (see instructions) (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>
d Owner failed to provide annual certifications or provided incomplete or inaccurate certifications	<input type="checkbox"/>	<input type="checkbox"/>
e Changes in Eligible Basis or the Applicable Percentage (see instructions)	<input type="checkbox"/>	<input type="checkbox"/>
f Project failed to meet minimum set-aside requirement (20%, 40/50 lead) (see instructions)	<input type="checkbox"/>	<input type="checkbox"/>
g Gross rent(s) exceed tax credit limits	<input type="checkbox"/>	<input type="checkbox"/>
h Project not available to the general public (see instructions) (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>
i Violator(s) of the Available Unit Rule under section 42(g)(2)(B)	<input type="checkbox"/>	<input type="checkbox"/>
j Violator(s) of the Vacant Unit Rule under Reg. 1.42-5(a)(1)(v)	<input type="checkbox"/>	<input type="checkbox"/>
k Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(5)(L)	<input type="checkbox"/>	<input type="checkbox"/>
l Low-income units occupied by nonqualified full-time students	<input type="checkbox"/>	<input type="checkbox"/>
m Owner did not properly obtain a utility allowance	<input type="checkbox"/>	<input type="checkbox"/>
n Owner has failed to respond to agency requests for monitoring reviews	<input type="checkbox"/>	<input type="checkbox"/>
o Low-income units used on a transient basis (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>
p Building is no longer in compliance nor participating in the section 42 program (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>
q Other noncompliance issues (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>

12 Additional information for any item above. Attach explanation and check box:

13a Building disposition by Sale Eviction Inevitable Other (attach explanation)

b Date of disposition (MM/CC/YYYY)

c New owner's name

d New owner's taxpayer identification number EIN SSN

14 Name of contact person

Street address

City or town, state, and ZIP code

15 Telephone number of contact person

Under penalty of perjury, I declare that I have examined this report, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of authorizing official Print name and title Date (MM/CC/YYYY)

For Paperwork Reduction Act Notice, see instructions. Cat. No. 15330-02 Form 8823 (Rev. 6-2011)

Form 8823


Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition

Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition

The scope of this guide is limited to guidelines for preparing Form 8823 for submission to the IRS. Taxpayers are responsible for evaluating the tax consequences of noncompliance with IRC §42.

Audit Technique Guide

This material was designed specifically for training purposes only. Under no circumstances should this content be used or cited as authority for setting or sustaining a technical position.



Department of the Treasury
 Internal Revenue Service

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Training 2899-001
 (Rev. 01-2011)

8823 Guide


(200 Pages)

IRC §42, Low-Income Housing Credit

The scope of this guide is limited to guidelines for IRS examiners conducting audits of taxpayers owning IRC §42, low-income housing projects.

Audit Technique Guide

This material was designed specifically for training purposes only. Under no circumstances should this content be used or cited as authority for setting or sustaining a technical position.



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 Internal Revenue Service

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Training 3123-006
 (Rev. 06-2010)
 EFD's No. 990204L

Audit Technique Guide

IRC §42 LIHC

(344 Pages)

Form 8823
 (Rev. 2017)
 Department of
 Housing and
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	Out of compliance	Noncompliance corrected
11 Check the box(es) that apply:		
a Household income above income limit upon initial occupancy	<input type="checkbox"/>	<input type="checkbox"/>
b Owner failed to correctly complete or document tenant's annual income recertification	<input type="checkbox"/>	<input type="checkbox"/>
c Violation(s) of the UPCS or local inspection standards (see instructions) (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>
d Owner failed to provide annual certifications or provided incomplete or inaccurate certifications	<input type="checkbox"/>	<input type="checkbox"/>
e Changes in Eligible Basis or the Applicable Percentage (see instructions)	<input type="checkbox"/>	<input type="checkbox"/>
f Project failed to meet minimum set-aside requirement (20/50, 40/60 test) (see instructions)	<input type="checkbox"/>	<input type="checkbox"/>
g Gross rent(s) exceed tax credit limits	<input type="checkbox"/>	<input type="checkbox"/>
h Project not available to the general public (see instructions) (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>
i Violation(s) of the Available Unit Rule under section 42(g)(2)(D)(ii)	<input type="checkbox"/>	<input type="checkbox"/>
j Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(ix)	<input type="checkbox"/>	<input type="checkbox"/>
k Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J)	<input type="checkbox"/>	<input type="checkbox"/>
l Low-income units occupied by nonqualified full-time students	<input type="checkbox"/>	<input type="checkbox"/>
m Owner did not properly calculate utility allowance	<input type="checkbox"/>	<input type="checkbox"/>
n Owner has failed to respond to agency requests for monitoring reviews	<input type="checkbox"/>	<input type="checkbox"/>
o Low-income units used on a transient basis (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>
p Building is no longer in compliance nor participating in the section 42 program (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>
q Other noncompliance issues (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>
12 Additional information for any item above. Attach explanation and check box		<input type="checkbox"/>

Form 8823

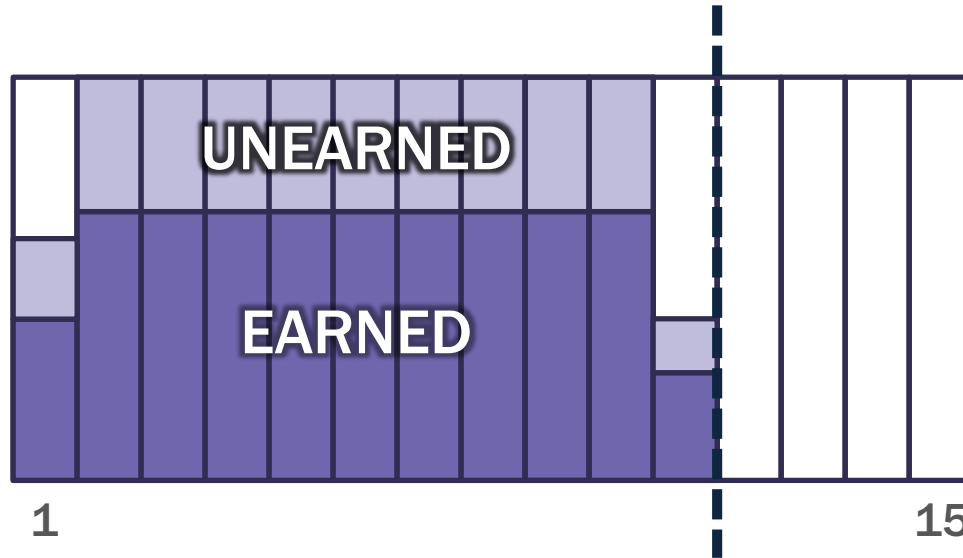
Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition

States issue Forms 8823.

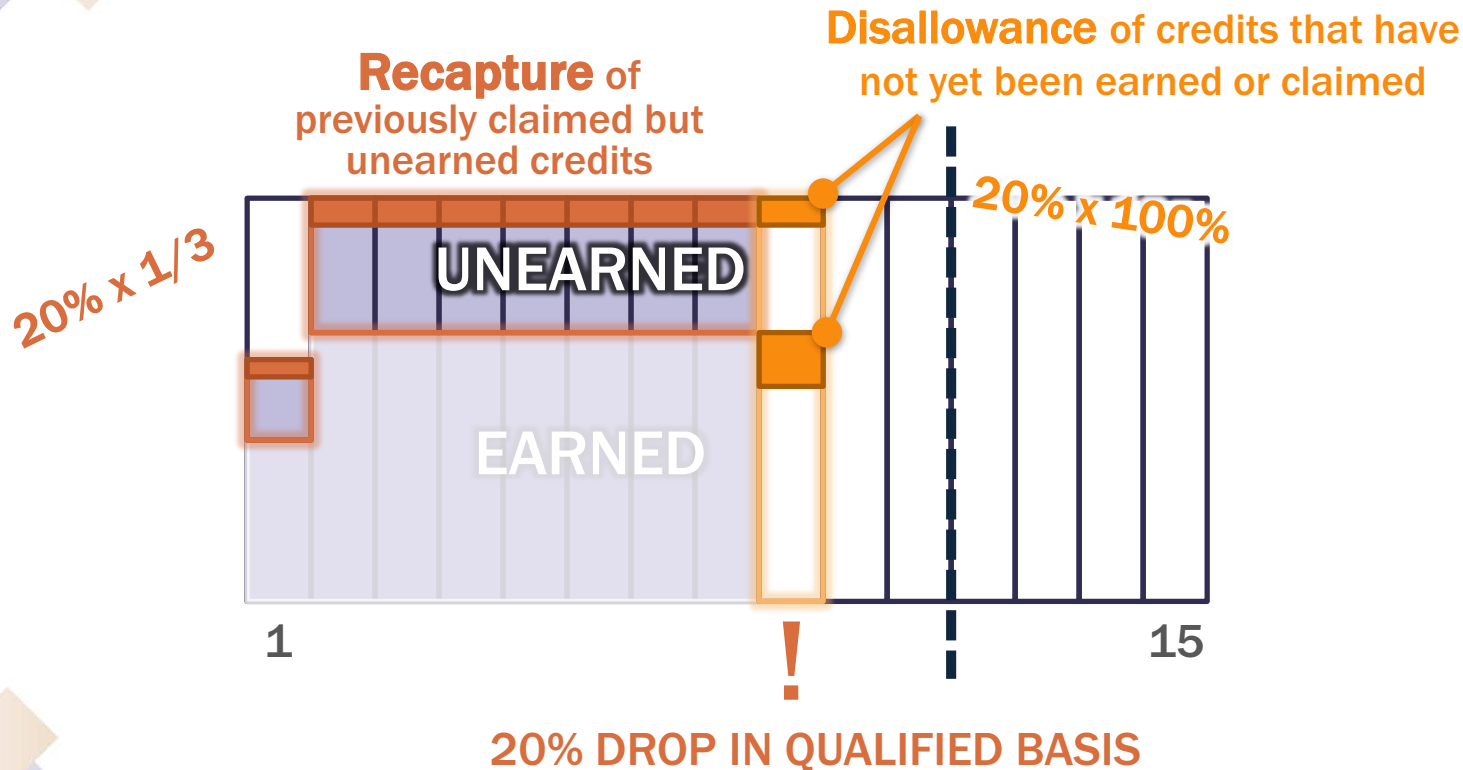
The IRS determines whether credits will be recaptured or disallowed.

Form 8823 does not always lead to credit recapture or disallowance.

Recapture vs. Disallowance

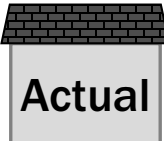


Recapture vs. Disallowance



Excess Basis

Excess Basis = \$1 million

		
	Actual	
Eligible basis	\$ 10,000,000	
Applicable fraction	x 100%	
<hr/>		
Qualified basis	10,000,000	
Tax credit percentage	\$ 9%	
<hr/>		
Annual tax credits	x 900,000	
	\$	

Maximum Qualified Basis
(Line 3a)



↓

\$ 9,000,000

\$ 810,000

Maximum Allowable Credit
(Line 1b)



	\$ 10,000,000
	x 100%
<hr/>	
	9,500,000
	\$ 9%
<hr/>	
	x 855,000
	\$



OK



Noncompliance-caused shortfall in qualified basis as of year end

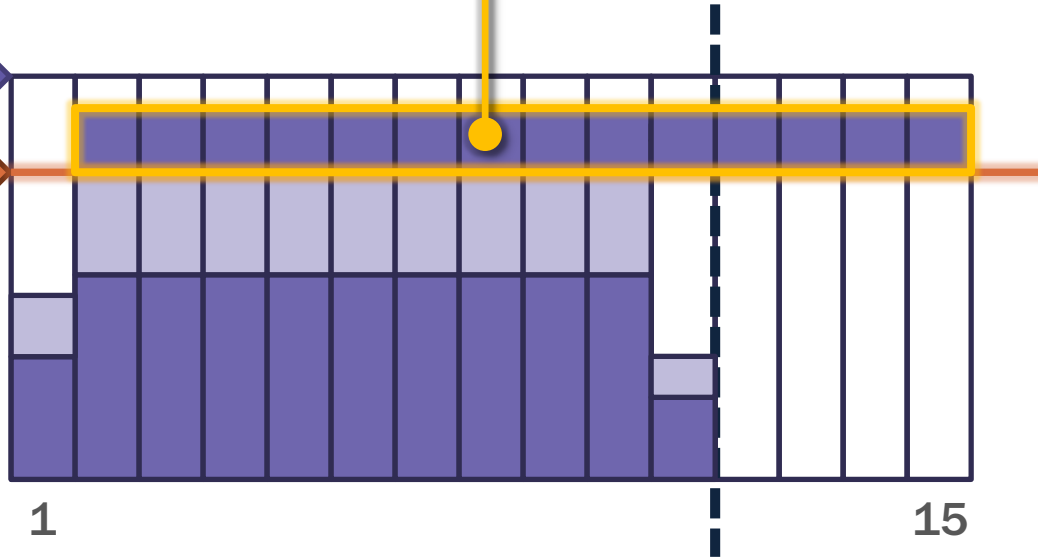
	Recapture of previously claimed credits?	Disallowance of current-year credits?
Building/Unit Damage	YES	YES
Casualty	NO	YES
In Federally Declared Disaster Area	NO	NO

2/3 or 15-Year Credits

Based on maximum QB



QB shortfall at end of Year 1





**Year
End**

Timing is ~~everything!~~
A LOT!

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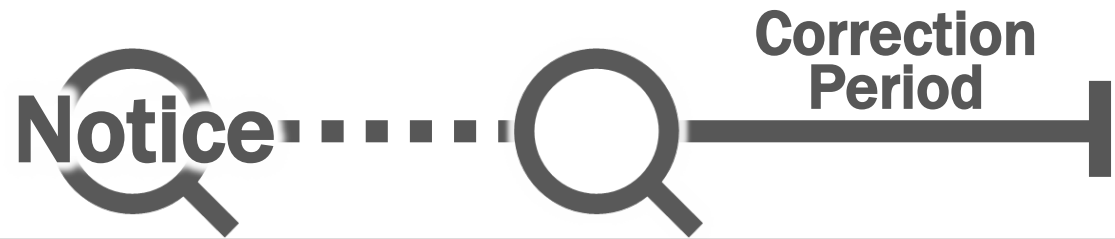
Yes?

No?

Recapture and/or
disallowance

Yes?

No?



Timing is ~~everything!~~
A LOT!

Form
8823



Yes?



No?

Year
End

Recapture and/or
disallowance



Yes?



No?



Notice

Correction
Period

Timing is ~~everything!~~
A LOT!

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Yes?



No?

Year
End

Recapture and/or
disallowance



Yes?



No?



Notice

Correction
Period



Timing is ~~everything!~~
A LOT!

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Yes?



No?

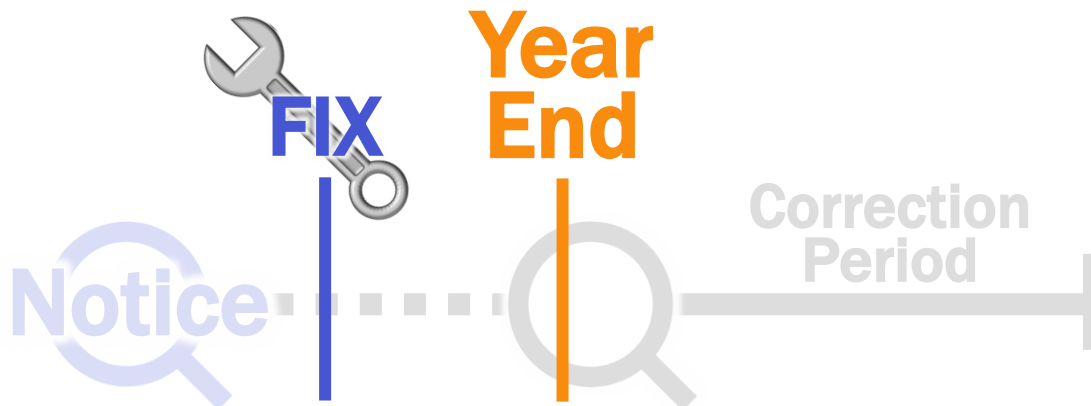
Recapture and/or
disallowance



Yes?



No?



Timing is ~~everything!~~
A LOT!

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Yes?



No?

**Year
End**

**Recapture and/or
disallowance**



Yes?



No?



Timing is ~~everything!~~
A LOT!

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Yes?

No?



**Year
End**

**Recapture and/or
disallowance**

Yes?

No?



Notice

Correction
Period



Timing is ~~everything!~~
A LOT!

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Yes?

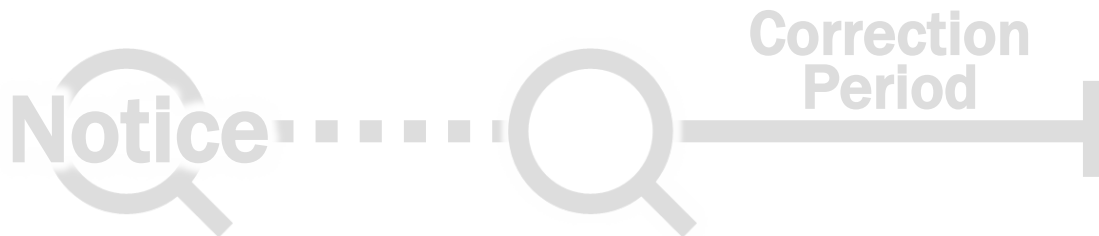
No?

Recapture and/or
disallowance

Yes?

No?

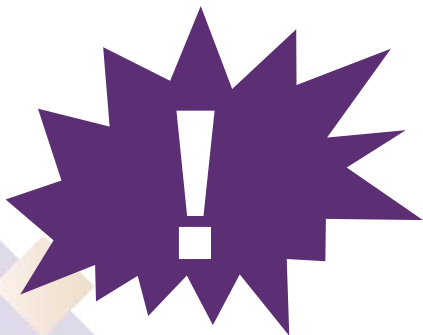
Nature



Three Types of Noncompliance

Correctable Retroactively

- “True and correct as of XX/XX/XXX”
- Generally documentation issues; you really were in compliance, but you have to go back and prove it



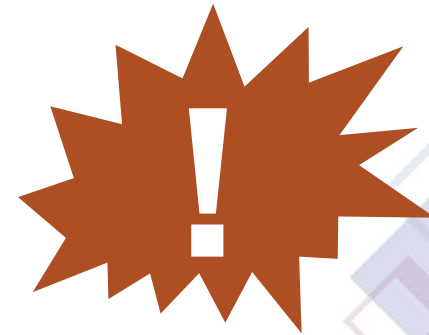
Correctable Prospectively

- Fix prior to year end to avoid loss of credits
- Over-income tenants, available unit rule, student rule, units unsuitable for occupancy, most everything else



You're losing credits

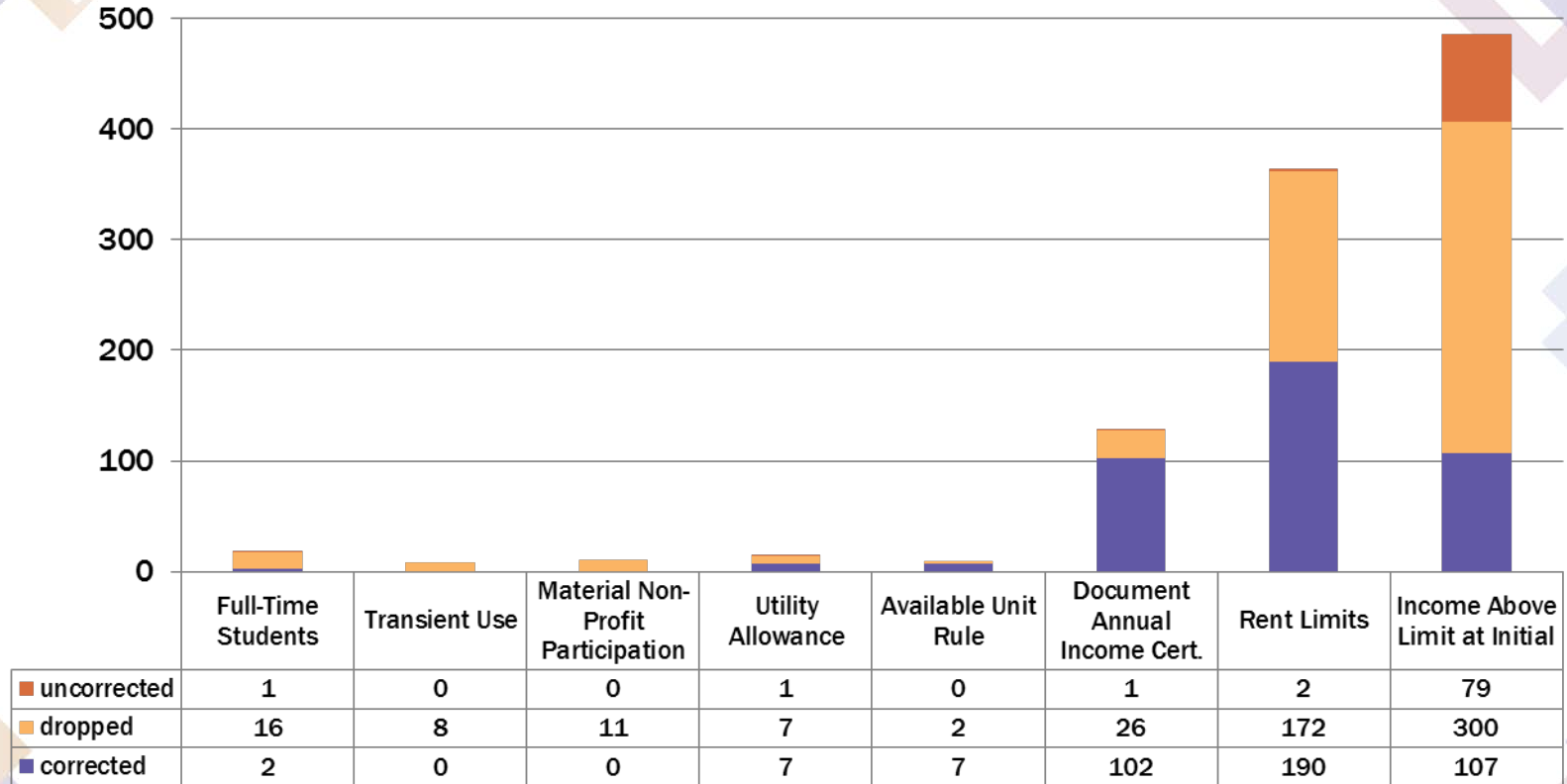
- Fix ASAP to avoid losing more in the future
- Over charging rent



Cheat Sheet

Not Reported on Form 8823, Credits OK	Reported on Form 8823, but credits may be safe	Reported on Form 8823 and LOSS OF CREDITS!!
Correctable noncompliance corrected prior to receiving notice of inspection (and prior to end of taxable year)	Correctable noncompliance corrected prior to end of taxable year but <i>after</i> receiving notice of inspection	Correctable noncompliance not corrected prior to notice of inspection or prior to end of taxable year – OR – non-correctable noncompliance

Findings in Texas – 2016



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