

Housing Finance Agency Forms and Other Reminders

LIHTC Compliance
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Why are we here?

- Improve quality of LIHTC form submissions
- Improve LIHTC Compliance Unit efficiency
- Reduce burden for housing agencies
- Improve Communications
- Solve Problems

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-Improve quality of LIHTC form submissions – significant amount of feedback from the LIHTC Compliance Unit regarding form submission errors many of them minor and avoidable.

-Improve LIHTC Compliance Unit efficiency – limited resources that we want to focus on critical actions instead of spending time resolving issues with form submissions and processing. New database is unforgiving and set up to identify all errors in submissions, so we need to ensure the quality of the forms to improve the accuracy of the database.

-Reduce burden for housing agencies – reduce the interaction time and back and forth communication with the LIHTC Compliance Unit and the housing agency personnel. Reduce time wasters on both sides.

-Improve Communications – collaborative effort to meet the form submission requirements and improve communications on both sides to solve problems expeditiously.

-Solve problems – The LIHTC compliance unit has to input all forms into the database, so it is critical that the forms match the format and provide the necessary information for the database input to be error free.

Form 8610 Filing Requirement - IRC 42(l)(3)

(3) Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying--

(A) the amount of housing credit amount allocated to each building for such year,

(B) sufficient information to identify each such building and the taxpayer with respect thereto, and;

(C) such other information as the Secretary may require.

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IRC 42(l)(3) Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying--

such (A) the amount of housing credit amount allocated to each building for year,

taxpayer with (B) sufficient information to identify each such building and the respect thereto, and;

(C) such other information as the Secretary may require.

Form 8610 – Common Errors

- Multiple Housing Agencies – Totals don't reconcile
- Prior Year Amended Form 8609 submitted with current 8610
- Original and amended 8609 submitted with 8610 package
- Amended Schedule A submitted with current Form 8610 package
- Non-Profit Set Aside amount less than 10%
- Credits given back not correct on Form 8610
- Inconsistent information reported

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-Some Housing Agencies file late almost every year

-States with more than one Housing Agency – Totals don't reconcile including Non-Profit Set Aside and Tax Exempt properties.

-Amended Form 8609 related to the prior year submitted with current year 8610.

-Original and amended 8609 submitted with 8610 package, both forms included in count and dollar amounts included on Form 8610.

-Amended Schedule A for a prior year submitted with current year Form 8610 package.

-Non-Profit Set Aside amount less than 10%.

-Credits reported as given back one year do not flow to subsequent year Form 8610 available credits.

-Inconsistent information reported. (i.e. amount reported on 8610, but no Sch. A attached for that project. Project done and cost cert provided, but no 8609 issued yet.)

Form 8610 Part I – Reconciliation of Attached Forms 8609 and Schedule A

Part I		Reconciliation of Attached Forms and Schedules	
1	Enter the number of attached Forms 8609 used to allocate credit in 2017	1	
2a	Enter the total number of attached Forms 8609 for credits (1) allocated prior to 2017 and (2) attributable under section 42(h)(4) to projects financed by tax-exempt bonds	2a	
b	Enter the total dollar amount of credits attributable to projects financed by tax-exempt bonds as described in 2a(2) above ▶ \$ _____		
3	Enter the number of attached Schedules A (Form 8610) reporting 2017 carryover allocations	3	
4	Total number of attached forms and schedules. Add lines 1, 2a, and 3	4	

Double and triple check for counts. If no form, do not count it. If dollars are reported on Form 8610 then a form must be completed.

Line 1 – Number of Form 8609s - **Allocation of Current Year Credits**. Number of forms **does not include IRC 42(h)(1)(E) or 42(h)(1)(F) carryover allocations from prior years**.

Line 2a – Number of 8609 forms with IRC 42(h)(1)(E) or 42(h)(1)(F) carryover allocations from prior years. **Forward commitment of credits**, so **> 10% of the expected costs** compared to the total eligible basis have to be **incurred** by prior year end, or allocations made on a project basis.

Line 2a – **Number of 8609 forms** with credits attributable to projects financed by **tax-exempt bonds** subject to volume cap under section 42(h)(4).

Line 2b – **Dollar amount of credits** attributable to projects financed by tax-exempt bonds subject to volume cap under section 42(h)(4). **2a(2) forms. Best practice** – separate the forms in a batch for easier review by the TE for reconciliation and include a cover sheet with the TE bond financing amount identified for each BIN.

Line 3 – **Number of Schedule A (Form 8610)** reporting carryover allocations for the current tax year. (Does not include prior year carryover allocations)

IRC 42(h)(1)(E) relates to buildings that have incurred more than 10% of the eligible

basis and there has been a carryover credit applied, or the carryover allocations are made on a project basis IRC 42(h)(1)(F).

Form 8610 Part II – Reconciliation of Credit Ceilings and Allocations – Lines 5a.- 5g.

Part II Reconciliation of Credit Ceilings and Allocations (see instructions)	
5a Enter the larger of \$2.35 multiplied by the state's population or \$2,710,000	5a
5b Enter the amount of credit ceiling returned in 2017 from allocations prior to 2017. See instructions	5b
5c Enter the amount (if any) allocated to the state from the 2017 National Pool	5c
5d Add lines 5a, 5b, and 5c	5d
5e Enter the unused state housing credit ceiling (if any) from the 2016 Form 8610, line 9	5e
5f Total state housing credit ceiling for 2017. Add lines 5d and 5e	5f
5g Enter the total amount included in line 5f that was allocated during 2017 to qualified nonprofit organizations under section 42(h)(5). See instructions ▶ §	

Line 5a. - A state's population is determined according to section 146(j). See the current year IRS Notice 2018-45 for applicable population figures. Minimum amount for small HFA's is 3.105 million in 2018. The credit allocated is the larger of \$2.70 times the population figure, or \$3.105 million.

Line 5b. - Don't include allocations made and returned in the same year.

Line 5c. - Enter the "Amount Allocated," if any, from the current year National Pool based on the Rev. Proc. that comes out in 11/19/18. Revenue Procedure 2018-55 IRB 2018-47

Line 5e. - Enter the unused state housing credit ceiling (if any) from the prior year Form 8610, line 9. Make sure the amounts carryover from one year to the next.

Line 5g. – Qualified Non-Profit Set Aside credit amounts - Not more than 90% of the line 5f amount is allowed to be allocated to projects other than qualified low-income housing projects described in section 42(h)(5)(B).

Enter the sum of the following amounts.

- Any amount reported on line 1b of an attached Form 8609 with box 6f (NP set aside) checked.
- Any amount reported on line 5 (carryover allocation) of an attached Schedule A (Form 8610) with question 3b (NP set aside) answered "Yes."

Best practice: Include the 8609 and 8610(Schedule A) forms with a non-profit set aside as a separate batch with a cover sheet showing the credits for each BIN where they will included in the non-profit set aside total.

Form 8610 Part II – Reconciliation of Credit Ceilings and Allocations - Lines 6-10

6a Enter the total dollar amount of credits from Forms 8609 used to allocate credit in 2017	6a			
b Enter the total dollar amount of credits from Schedules A (Form 8610), line 5	6b			
c Total credits allocated during 2017. Add lines 6a and 6b (can't exceed line 5f)			6c	
7 Enter the smaller of line 5e or line 6c			7	
8 Subtract line 7 from line 6c			8	
9 State's unused housing credit ceiling carryover to 2018. Subtract line 8 from line 5d. If zero or less, enter -0-			9	
10 Unused 2016 carryover assigned to 2018 National Pool. Subtract line 7 from line 5e			10	

Lines 6a and 6b

Enter on the applicable line the dollar amount actually allocated during 2017. Don't include the following.

- Credits allowed to tax-exempt bond financed projects under section 42(h)(4). These credits don't count against the total state housing ceiling authorized on line 5f (Total Housing Credit Ceiling).
- Amounts allocated and returned during the year, unless such amounts are reallocated by the close of the year.

On line 6a, enter the total amounts reported on all Forms 8609, Part I, line 1b (Max. allowable credit), that are included on line 1 of this Form 8610. On line 6b, enter the total amounts reported as carryover allocations that are included on line 3 of this Form 8610. (Dollar Amounts)

Line 9. State's unused housing credit ceiling carryover to 2018. Subtract line 8 from line 5d. If zero or less, enter -0-

Line 10. Unused 2016 carryover assigned to 2018 National Pool. Subtract line 7 from line 5e

Form 8610 Part III – Compliance with Low-Income Housing Requirements

Part III Compliance With Low-Income Housing Requirements (see instructions)		
11 Does the state's qualified allocation plan in effect for 2017 include compliance monitoring procedures as required in section 42(m)(1)(B)(iii) and Regulations section 1.42-5(a)(2), including monitoring for habitability standards through regular site visits? (If "No," attach an explanation.)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
12 Has the housing credit agency, for 2017 (or its most recent 12-month operating period), complied with all applicable requirements under the compliance monitoring procedures in its qualified allocation plan? (If "No," attach an explanation.)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
13 Has the housing credit agency, for 2017 (or its most recent 12-month operating period), complied with the requirements of its monitoring procedures to fulfill its notification of noncompliance responsibilities under Regulations section 1.42-5(e)? (If "No," attach an explanation.)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
14 Number of buildings subject to monitoring	14	
15 Number of buildings for which compliance monitoring was completed	15	
Under penalties of perjury, I declare that I have examined this report and accompanying forms, schedules, binding agreements, and election statements, and other attachments, and to the best of my knowledge and belief, they are true, correct, and complete.		
<div style="border-bottom: 1px dashed black; width: 100%; margin-bottom: 2px;"></div> Signature of Authorizing Official	<div style="border-bottom: 1px dashed black; width: 100%; margin-bottom: 2px;"></div> Print Name and Title	<div style="border-bottom: 1px dashed black; width: 100%; margin-bottom: 2px;"></div> Date

Line 11, QAP includes Compliance Monitoring Procedures, should be checked “Yes”, or if checked “No” an explanation must be attached. Required in section 42(m)(1)(B)(iii) and Regulations section 1.42-5(a)(2), including monitoring for habitability standards through regular site visits.

Line 12, Housing Agency has complied with Compliance Monitoring Procedures in the QAP during the current tax year? Should be checked “Yes”, or if checked “No” an explanation must be attached.

Line 13, Housing Agency has complied with Compliance Monitoring Procedures during the current tax year to fulfill its notification of non-compliance responsibility under Regulations section 1.42-5(e)? Should be checked “Yes”, or if checked “No” an explanation must be attached.

Line 14 - Include all low-income buildings within the 15-year compliance period as of the end of the reporting year that were subject to compliance monitoring under Regulations section 1.42-5. Line 14 also includes buildings financed with tax-exempt bonds and by the Rural Housing Service.

Line 15 - Of the low-income buildings reported on line 14, enter the number of buildings that have been physically inspected and/or subjected to the sampling for unit inspections and tenant file reviews at least once in the last 3 years. Consider the physical inspections and tenant file reviews completed if the owner has been provided notice of the results. **Caution: If line 14 doesn't equal line 15, attach an**

explanation to the Form 8610 to explain the difference. See Rev. Proc. 2016-15, 2016-11 I.R.B. 435.

Form 8610 – Best Practices

- File Timely
- File one Form 8610 when multiple agencies within a State
- Verify Proper Form Count Reported
- Verify Correct Line Information Reported
- Attach Form 8609 and Amended Form 8609 related to the Current Year
- Only provide amended 8609 if corrected prior to filing the current year 8610 package

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-In states with multiple housing credit agencies, file one Form 8610 and verify cumulative totals include information from all individual agencies.

-Clerical staff at the Campus count forms and compare the number to Lines 1, 2a, and 3. (use Pre-Submission Review Check Sheet to avoid errors)

-For an amended Form 8610, check the “amended report” box. Complete only those lines that are being amended by entering the correct information. Attach any additional documentation for explanation of filing.

-Only include the last amended amounts when an Original and amended 8609 submitted with 8610 package.

Organize the Form 8610 Package in the following order and attach a cover sheet to identify the separate forms and categories for reconciliation:

F8609's in sequential order by BIN within the following categories and count them.

Form 8609 used to allocate credit in 2018

Form 8609 used to allocate credit in prior year

Form 8609 by projects financed with tax exempt bonds.

Form 8609 with any amount reported on line 1b and box 6f is checked (Non-Profit Set-Aside)

Schedules A (Form 8610), not including those for projects approved for carryover allocation relief under Rev. Proc. 2014-49 in sequential order by BIN within the following categories:

Schedule A (Form 8610) with an amount reported on line 5 and question 3b answered “No.”

Schedule A (Form 8610) with any amount reported on line 5 and question 3b answered “Yes.”

Schedules A (Form 8610) for projects approved for carryover allocation relief under

Rev. Proc. 2014-49 in sequential order by BIN.

Form 8610 – Best Practices

- Schedule A only for Current Year
- Reconcile Non-Profit Set Aside and 10% or more verified, or explained
- Reconcile Tax Exempt Bond Financed Properties
- Verify Credits Given Back reported accurately
- Ensure reported information is consistent
- Database Reconciliation Report – respond timely to inquiries

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-Separate amended Schedule A for a prior year submitted with current year Form 8610 package for TE to associate with the correct year form 8610 for input.

-Reconcile Non-Profit Set Aside reported amounts to the individual forms

-Verify Non-Profit Set Aside amount less than 10% (Attach an explanation)

Database has a reconciliation mechanism, so it will be found during processing.

(Use Pre-Submission Review Check Sheet to avoid error)

-Tax Exempt bond financed properties reported on Form 8610 do not match the identified properties on the individual 8609 forms. (Use Pre-Submission Review Check Sheet to avoid error)

-Review prior year 8610 to ensure Credits reported as given back one year flow to subsequent year Form 8610 available credits.

-Report consistent information. (i.e. amount reported on 8610, but no Sch. A attached for that project. Project done and cost cert provided, but no 8609 issued yet. It has to either be a current year, or carryover allocation if on Form 8610, so there has to be a corresponding form 8609, or Schedule A (8610).

Note: Amended 8609 and Schedule A (8610) forms for the current year should be provided as part of the Form 8610 package and counted, but amended 8609 and Schedule A (8610) forms related to prior year 8610 form submissions should be separated out by allocation year for review by the Tax Examiners and input as amended forms.

Form 8610 Schedule A – Common Errors

3 a Check if the carryover allocation is: building based or project based

b If the carryover allocation is subject to the nonprofit set-aside under section 42(h)(5), you must check "Yes." Otherwise, you must check "No" Yes No

4 Date of carryover allocation ▶ _____

5 Amount of carryover allocation

5	
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6 If a binding agreement (see instructions) was entered into, enter the maximum applicable credit percentage for:

6a		%
6b		%
6c		%

- Building Based, or Project Based not checked
- Non Profit Set Aside, "Yes", or "No" options not checked
- Date of Carryover Allocation not reported
- Date of Carryover Allocation indicates a prior year, so the form should not be included in the current year Form 8610 package.
- Amount of Carryover Allocation inaccurate, or not provided

Form 8610 Schedule A – Reminders and Best Practices

- Check box for Amended Carryover Allocation
- Report Carryover Allocations when no 8609 filed by YE
- Check Box for Carryover Relief under Rev. Proc. 2014-49 – Federal Disaster Zone
- Line 2 - Ensure Taxpayer's EIN provided and proper format.
- Line 3a. - Check box for Building Based, or Project Based.
- Line 3b. - Check Non Profit Set Aside, "Yes", or "No".
- Line 4 - Report the Date of Carryover Allocation.
- Line 5 - Verify Amount of Carryover Allocation.

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-Check box for amended carryover allocation.

-Major Disaster Declarations - The attached copies of Schedule A (Form 8610) must have the box checked that indicates the housing credit agency granted carryover allocation relief under Rev. Proc. 2014-49. The housing credit agency should only include Schedules A (Form 8610) for projects receiving approval of the carryover allocation relief since the agency last filed Form 8610. The information from these particular Schedules A (Form 8610) aren't included on any line in Part I, or Part II of Form 8610. F8610's Schedule A's are to be filled out completely by the State.

Line 2 – EIN must be completed and accurate.

Line 3a – a box must be checked for building based, or project based.

Line 3b – a box must be checked that Yes, or No the project is subject to a non-profit set aside

Line 4 –Date the authorized official of the state housing agency signs and dates the carryover allocation document

Line 5 – must reflect the carryover allocation dollar amount.

If you checked the "building based" box on line 3a, enter the amount of credit allocated to the building under section 42(h)(1)(E). If you checked the "project based" box on line 3a, enter the amount of credit allocated to all the buildings in the project under section 42(h)(1)(F).

Form 8609 Part I – Common Errors

1a Date of allocation ▶ _____	b Maximum housing credit dollar amount allowable	1b	
2 Maximum applicable credit percentage allowable (see instructions)		2	%
3a Maximum qualified basis		3a	
b Check here ▶ <input type="checkbox"/> if the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(d)(5)(B). Enter the percentage to which the eligible basis was increased (see instructions)		3b	1 ____ %
4 Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.)		4	%
5 Date building placed in service ▶ _____			
6 Check the boxes that describe the allocation for the building (check those that apply):			
a <input type="checkbox"/> Newly constructed and federally subsidized b <input type="checkbox"/> Newly constructed and not federally subsidized c <input type="checkbox"/> Existing building			
d <input type="checkbox"/> Sec. 42(e) rehabilitation expenditures federally subsidized e <input type="checkbox"/> Sec. 42(e) rehabilitation expenditures not federally subsidized			
f <input type="checkbox"/> Allocation subject to nonprofit set-aside under sec. 42(h)(5)			

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-Part II completed along with Part I and submitted with Form 8610

-No allocation date on Line 1a and Line 4 < 50%, or blank

-Date on Line 1a, but Line 4 > 50%

-Line 1b – The amount does not equal the percentage on line 2 multiplied by the amount on line 3a.

-Line 2 – Maximum Applicable Credit Percentage is zero, blank, or more than 9%.

-Line 3b – Blank, or greater than 100% input but the box is not checked.

-Line 4 – the percentage of aggregate basis financed by Tax Exempt Bonds is greater than zero, but either line 6a or 6d is not checked. (Indicating federally subsidized)

-Line 6 – none of the boxes 6a. – 6e. are checked. (One box must be checked)

-Box 6f checked, but none of the boxes 6a. – 6e. checked.

-Signature not present, or form not dated. A "wet" signature is not needed. An emailed signed copy with the State agency signature is sufficient.

Form 8609 Part I Reminders and Best Practices

- Addition to Qualified Basis or Amended box checked as necessary
- Form 8609 only Part I filed, not Part II from taxpayer
- If no allocation date, verify Line 4 > 50% and Line 6a., or Line 6d. checked
- If Date on Line 1a., but Line 4 >50%, then the form needs correction
- Line 1b – Verify the amount equals line 2 multiplied by the amount on line 3a.
- Verify Line 2 > zero and < 9%
- Line 3b – percentage must be between 100% to 130%.
- Line 4 – If the percentage is greater than zero either line 6a or 6d must be checked.
- Line 6 – at least one box must be checked from 6a – 6e. If not, correct form.
- Box 6f checked and at least one box from 6a. – 6e. must be checked.
- Signature must be present and form dated. A "wet" signature is not needed. An emailed signed copy with the State agency signature is sufficient.

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-Check this box if an allocation relates to an increase in qualified basis under section 42(f) (3). Do not enter the original eligible basis. **Note: Only time that an amended form will not overwrite the previous one is if both boxes are checked.**

-Check the amended box if this form amends a previously issued form. Complete all entries and explain the reason for the amended form.

-IRS only wants the Part I completed for forms submitted with the 8610 package.

-Check to ensure Form 8609 Part I has been completed and signed by a state agency official. If incomplete, incorrect, or not signed, correct it.

-Line 1a – If no date of allocation on the form, then line 4 must have greater than 50% listed and either line 6a or 6d must be checked. If not, then the form needs to be corrected. -If line 1a has a date, but line 4 has 50% or more, then the form needs to be corrected.

-Line 3b – percentage must be between 100% to 130%. Note: If blank the database will default this percentage to 100%. If entered percentage is greater than 100% input as if the box is checked.

-Line 4 –if the percentage is greater than zero either line 6a or 6d must be checked.

-Line 6 – at least one box must be checked from 6a – 6e. If not, correct the form. Box 6f may or may not be checked.

-Wet signature is not required.

IRC 42(m)(1)(B)- Compliance Monitoring Requirements

IRC 42(m)(1)(B) Qualified allocation plan.--For purposes of this paragraph, the term "qualified allocation plan" means any plan--

(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

- Housing credit agencies use Form 8823 to fulfill their responsibility under section 42(m)(1)(B)(iii) to notify the IRS of noncompliance with the low-income housing tax credit provisions **or** any building disposition.
- The housing credit agency should also give a copy of Form 8823 to the owner(s).

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Reference in the instructions for Form 8823 is to this section of the Code with (i) and (ii) referring to the other requirements of the Qualified Allocation Plans (QAP).

IRC 42(m)(B) Qualified allocation plan.--For purposes of this paragraph, the term "qualified allocation plan" means any plan--

(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

Housing credit agencies use Form 8823 to fulfill their responsibility under section 42(m)(1)(B)(iii) to notify the IRS of noncompliance with the low-income housing tax credit provisions **or** any building disposition.

The housing credit agency should also give a copy of Form 8823 to the owner(s).

Treasury Regulation 1.42-5

- The Agency must be required to file Form 8823, “Low-Income Housing Credit Agencies Report of Noncompliance,” with the Service no later than 45 days after the end of the correction period and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The Agency must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of the project is noncompliance that must be reported to the Service.

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TR 1.42-5(e)(3) - The Agency must be required to file Form 8823, “Low-Income Housing Credit Agencies Report of Noncompliance,” with the Service no later than 45 days after the end of the correction period and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The Agency must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under paragraph (c)(1)(ii) and (vii) of this section, respectively, that results in a decrease in the qualified basis of the project under [section 42\(c\)\(1\)\(A\)](#) is noncompliance that must be reported to the Service.

Form 8823 - Compliance Monitoring Report

- Name, EIN, address included
- BIN correct
- Physical Inspections
- Tenant File Reviews
- Correction Period
- Notification to the Property Owner
- Reporting requirements to IRS
- Out of Compliance Issues Lines 11a.-11q.
- Building Dispositions Line 13 and New Owner Information

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State agencies must file Form 8823 no later than 45 days after the end of the correction period (including permissible extensions)

Ensure name, EIN, and address of the building are included.

Correctly formatted BIN provided

At least once every 3 years, state agencies conduct on-site inspections of all buildings in the project and, for at least 20 percent of the project's low-income units to ensure they are suitable for occupancy. Revenue Procedure 2016-15 sampling options. 20 percent of the low-income units in the low-income housing project, rounded up to the nearest whole number of units, or
(2) the Minimum Unit Sample Size set forth in the following Low Income Housing Credit Minimum Unit Sample Size Reference Chart:

At least once every three years, the state agencies conducts a review of the certifications, documentation supporting the certifications, and the rent records for all the tenants living in the units. Revenue Procedure 2016-15 sampling options.

The correction period is the period of time during which the owner of an LIHC property must correct any noncompliance identified by the state agency. The correction period begins with the date the state agency provides written notification *to the owner* that the building is not in compliance. Generally, the correction period may not exceed 90 days from the date of the owner's notification; *there is no minimum correction period*. However, the correction period can be extended for up to a total of 6 months if there is a good cause for granting the extension.

Notify the owners by sending them a copy of the Form 8823.

Physical Inspection - Requirements

- Initial Inspection Sample Size
- On site inspections at least every three years
- Increase sample size as necessary
- Early initial physical inspections
- Report non-compliance

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Treas. Reg. §1.42-5(c)(2)(ii)(A) requires state agencies to conduct on-site inspections of all buildings in the project, and for at least 20 percent of the low-income units, inspect the units and review the certifications, the documentation supporting the certifications, and the rent records for the tenants in those units, by the end of the second calendar year following the year the last building is placed in service.

Treas. Reg. §1.42-5(c)(2)(ii)(B) requires that, at least once every 3 years, state agencies conduct on-site inspections of all buildings in the project and, for at least 20 percent of the project's low-income units, inspect the units and review the certifications, documentation supporting the certifications, and the rent records for all the tenants living in the units.

***Revenue Procedure 2016-15 allows an alternative sampling option.**

If you complete the first inspections early and prior to the owner submitting Part 2, then you may have to complete additional initial inspections by the required date if the sample size changes. You cannot wait until the second inspection period to complete the correct number of initial inspections in the situation where the owner's disclosure does not match the Form 8609 that is filed at a later date.

The UPCS requires housing to be decent, safe, sanitary and in good repair.

- (1) Site; (2) Building exterior; (3) Building systems; (4) Dwelling units; and (5) Common areas.

Health and Safety Hazards – submit to Philadelphia Campus for input into the database and Program Analyst review.

Under Treas. Reg. §1.42-5(a), state agencies are required to report any noncompliance of which the agency becomes aware as a result of the annual certification or periodic review of tenant files and physical inspection of the property, without regard to whether the initially outstanding noncompliance is subsequently corrected.

Physical Inspection – Best Practices

- Significant non-compliance identified - increase number of units inspected
- Identification of units within multi-building project – units from each building if possible
- Report all violations of USPS, or local code in detail

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In the event that extensive noncompliance is identified, state agencies should consider expanding the number of units inspected/files reviewed beyond the 20 percent sample required under Treas. Reg. §1.42-5(c)(2)(ii), or the minimum number of units reviewed under Rev. Proc. 2016-15. **Circumstances** warranting consideration of **expanding the sample** of LIHC units reviewed include (but are not limited to):

1. Poor internal controls (significant risk of error)
2. Multiple problems
3. Significant number of nonqualified units
4. Significant number of households are not income-qualified
5. Credible information from a reliable source

-Inspect units from each building in a multi building project to get a wider view of the potential non-compliance issues throughout the project and facilitates a review of more buildings along with the common areas of the project.

-**Documenting noncompliance** with the physical inspection standards with sufficient **detail** is particularly important because later there may be no visible indication that the noncompliance ever occurred. **Narratives** describing the **cause, nature and extent of the violations** are helpful and should also clarify if the issue is a unit, common area, building exterior or system, or site problem. (e.g., physical inspection reports, photographs, written statements from tenants, etc. Do *not* send photocopies of pictures.)

Tenant File Review- Requirements

- Review for number of residents
- Verify income qualified household
- Verify units rent restricted
- Review for students in household
- Verify minimum set aside met

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Form 8823 Item 7d. “Reviewed by agency” includes physical inspection of the property, tenant file inspection, or review of documentation submitted by the owner.

Treas. Reg. §1.42-5 provides the minimum standards for conducting compliance monitoring activities. At least once every three years, the state agency must conduct on-site inspections for all buildings in the project and, for at least 20%, or the minimum number allowed under Rev. Proc. 2016-15 of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.

Verify minimum set aside is met based on tenant file reviews.

As a point of distinction, the compliance monitoring regulations also require the owner of a project, at a minimum, to certify annually to the state agency that for the preceding 12-month period the project was in compliance with the requirements of IRC §42. The certification covers a variety of requirements, including that the owner has received an annual income certification from each low-income tenant and documentation supporting that certification, and that each building in the project was suitable for occupancy, taking into account local health, safety, and building

codes. Treas. Reg. §1.42-5(c) (1) lists the annual certification requirements. .

Tenant File Review – Best Practices

- Include explanations – suspect falsified documents
- Review same units as physical inspection
- Review larger sample if significant problems identified
- Use formatted template to determine income qualification for comparison to actual tenant income sources

21

State agencies should also include explanations when they suspect owners, managing agents, or other parties may have misrepresented factual information such as falsifying income verifications or altering tenant files.

In the event that extensive noncompliance is identified, state agencies should consider expanding the number of files reviewed beyond the minimum number required under Treas. Reg. §1.42-5, or Rev. Proc. 2016-15.

Circumstances warranting consideration of **expanding the sample of LHC units reviewed** include (but are not limited to):

1. Poor internal controls (significant risk of error)
2. Multiple problems
3. Significant number of nonqualified units
4. Significant number of households are not income-qualified
5. Credible information from a reliable source

Notification to Property Owners

- Letter to property owner
- Content of letter
- Correction period
- Non-compliance reporting
- Back in compliance reporting
- Critical Notification Letter – Exigent, life threatening violation, and fire and safety hazard requiring immediate attention

22

Under Treas. Reg. §1.42-5(e)(2), the state agency is required to provide **prompt written notice** to the **owner** of a low income housing project if the state agency discovers that the project is not in compliance with the state agency's inspection standard, or the annual certification is inaccurate. Notification letters establish and document the beginning of the correction period for any "out of compliance" issues.

Form 8823 ATG Exhibit 6-2 is a sample letter that may be used.

Notice to owner of violation following physical inspection and tenant file review.
Timing – **within 45 days after the end of the correction period** (usually 90 days after inspections)

Follow up – verify back in compliance during correction period

Reinspection – possible when significant non-compliance issues

Verified back in compliance – proof provided by owner

Describe the noncompliance, electronic pictures, and newspaper articles are helpful to the owner in providing notification of the non-compliance issues.

When state agencies determine that the violations involve life-threatening problems, a critical notification letter requiring immediate corrective action should be sent to the owner. *To ensure prompt correction of exigent, life threatening health and safety deficiencies*, the project representative should be provided a list of every observed life threatening violation and fire safety hazard that needs immediate attention or remedy, before the inspector leaves the project site. See Exhibit 6-4. To document receipt, the project representative should sign the state agency's copy of the list of

deficiencies.

Reporting Requirements to IRS

- Who must report
- When to report
- Where to file
- Amended forms
- Dates – Out of Compliance and Non-Compliance Corrected
- Item 10 checkbox – when to use
- Identify all applicable Out of Compliance items

23

Housing credit agencies use Form 8823 to fulfill their responsibility under section 42(m)(1)(B)(iii) to notify the IRS of noncompliance with the low-income housing tax credit provisions **or** any building disposition.

The housing credit agency should also give a copy of Form 8823 to the owner(s).

All forms sent to the Philadelphia address because they are input on database. Periodically checking filings for issues that used to be reported to Program Analyst directly. (i.e. Line 5, Total credit allocated to this BIN, should be zero.) Amended forms: No rescissions allowed. File amended forms to correct previously reported information.

Dates – out of compliance date of inspection, back in compliance. **Item 9.** Enter the date that the noncompliance issue was corrected. If there are multiple issues, enter the date the last correction was made.

Item 10. Do not check this box unless the sole reason for filing the form is to indicate that previously reported noncompliance problems have been corrected

Check all Out of Compliance Items that apply because combinations may affect how much of the credit can be disallowed during an audit.

2016, 2017, and 2018 through March number reported of each non-compliance issue. Prior to Oct. 2017 only dispositions and physical inspections reported in database along with any others that were evaluated for a potential audit.

Item 11a. - Household income above income limit upon initial occupancy

- Review initial income certifications
- Expand scope
- Consider Minimum Set Aside impact

24

Item 11a. - Household income above income limit upon initial occupancy - initial tenant file review – 465 reported

-State agencies are required to review the low-income certifications, and the supporting documentation, for the tenants in a sample of LIHC units. Therefore, the state agency must review the **initial income certification if the tenant moved in within the last year and the most recent income recertification for continuing tenants.**

-For state agency reviews conducted **after July 30, 2008**, where the project is a **100% LIHC project** and the owner is **not subject to the annual income recertification requirements**, the state agency will always **review the initial income certification.**

-Expanding the scope of the tenant file reviews by the State Housing Agency when high levels of non-compliance are identified could lead to a violation of the minimum set aside, or at the very least a non-compliance issue related to the specific units that have income over the limits of 50% and 60% AMGI levels. Non-compliance related to the minimum set-aside could result in recapture of the credit.

Item 11b. - Owner failed to correctly complete or document tenant's annual income recertification

- Review income re-certifications
- Consider Next Available Unit Rule

25

Item 11b. - Owner failed to correctly complete or document tenant's annual income recertification – subsequent tenant file review – 776 reported

-The length of time the non-compliance was reported by the State Housing Finance Agency (HFA) and if the non-compliance was corrected must be identified on Form 8823. The Next Available Unit Rule is a consideration also when the owner fails to correctly complete, or document the tenant's annual income recertification.

-Definition Next Available Unit Rule: The Next Available Unit Rule under IRC §42(g)(2)(D) states that if the income of the occupants of a low-income unit increases above 140 percent of the income limit (or 170 percent in deep rent skewed developments), the unit will continue to be treated as a low-income unit if the occupants initially met the income limitation and the unit continues to be rent restricted.

-The Next Available Unit Rule may have been violated because if the income of the occupants of the unit increases above 140 percent of the applicable income limitation, the unit will cease to qualify as a low-income unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by

a new resident whose income exceeds the income limitation.

Item 11c. Violation(s) of the UPCS or local inspection standards

- Identify deficiency
- Identify severity
- Health, safety, or building violation
- Report all deficiencies, whether or not corrected
- Casualty event- provide explanation
- Subsequent violation reporting
- Violation 11n. Failure to respond to monitoring requests
- Violation 11p. No longer participating in IRC 42

26

Item 11c. Violation(s) of the UPCS or local inspection standards (see instructions) (attach explanation)

Housing credit agencies must use either **(a)** the local health, safety, and building codes (or other habitability standards) or **(b)** the Uniform Physical Condition Standards (UPCS) (24 C.F.R. section 5.703) to inspect the project, but not in combination. The UPCS does not supersede or preempt local codes. Thus, if a housing credit agency using the UPCS becomes aware of any violation of local codes, the agency must report the violation.

Attach a statement describing either **(a)** the deficiency and its severity under the UPCS, i.e., minor (level 1), major (level 2), and severe (level 3) or **(b)** the health, safety, or building violation under the local codes. - 13,775 reported

Under Regulations section 1.42-5(e)(3), report all deficiencies to the IRS whether or not the noncompliance or failure to certify is corrected at the time of inspection.

-It is important that the inspection report, or other explanation attached to the Form 8823 identifies the severity of the violation level using the HUD definitions as “level 3” violations as the most severe to one “level 1” issue as the least severe.

-If there are exigent health and safety hazards send to the Philadelphia Campus unit and provide attach explanations of the issues that caused this reporting, so IRS can evaluate if immediate action is needed.

-Ensure that timeframe of the non-compliance is identified and if the non-compliance was corrected.

-When the Physical damage to the project was caused by casualty events which render the LIHC residential rental units or buildings, or common areas associated with the property, unsuitable for occupancy it is reported as noncompliance with the UPCS or local standards and an explanation must be attached to identify the specific circumstances of the casualty event. The physical damage must be corrected within a reasonable timeframe which has been determined to be 24 months.

-If the casualty event damage is not corrected within 24 months, then consider a subsequent Form 8823 to report that the building is no longer in compliance nor participating in the LIHC program, violation 11p.

-There is also a possibility that the owner will fail to respond to requests for compliance monitoring reviews when the casualty even damage is not fixed, so a subsequent Form 8823 should be filed that reflects a violation 11n.

Item 11d. Report the failure of the owner to provide annual certifications

- No annual certifications
- Incomplete, or inaccurate annual certifications
- Report violations of local health, safety, or building codes

27

Item 11d. Report the failure of the owner to provide annual certifications or the provision of certifications that are known to be incomplete or inaccurate as required by Regulations section 1.42-5(c). As examples, report a failure by the owner to include a statement summarizing violations (or copies of the violation reports) of local health, safety, or building codes; report an owner who provided inaccurate or incomplete statements concerning corrections of these violations. – 775 reported

-Owners are responsible for reporting to the state agency annually that their projects were compliant with the IRC §42 requirements for the preceding 12-month period. They must report in the form and manner the State Agency specifies and must certify, under the penalty of perjury, that the information provided is true, accurate, and in compliance with the requirements of IRC §42.

-Ensure that the length of time the non-compliance was not corrected and if the non-compliance was corrected is reported .

-There is the possibility of other noncompliance issues that must be reported at the same time including 11.e. Changes in Eligible Basis or the Applicable Percentage, 11.f. Project Failed to Meet Minimum Set-Aside Requirement, or 11.i. Violation(s) of the

Next Available Unit Rule.

Item 11e. - Changes in Eligible Basis or the Applicable Percentage

- Report Federal Grant , or TE Financing
- Increase to Eligible Basis
- Changes in common area
- Fees charged
- Converted units

28

Item 11e. - Changes in Eligible Basis or the Applicable Percentage (see instructions)
For buildings placed in service before July 31, 2008, report any federal grant made with respect to any building or the operation thereof during any tax year in the compliance period. For buildings placed in service after July 30, 2008, report any federal grant used to finance any costs that were included in the eligible basis of any building. The eligible basis is reduced by grant amounts and tax-exempt bond financing. 114 reported

-Increases to eligible basis that result in excess basis compared to the first year of the credit period need to be reported

-The Eligible Basis of a property is reduced when space that originally qualified as residential rental property changes character or space that was originally designated for use by qualified tenants is no longer available to them.

-Typical noncompliance may involve converting common areas to commercial property, converting units used for resident managers, security officers, or maintenance personnel to market rate units working in conjunction with the vacant unit rule, or charging fees for facilities (such as a swimming pool), the cost of which

were included in the Eligible Basis.

-The date of noncompliance is the specific date the residential space is converted to commercial space or when a fee is charged. The issue may also result in a violation of the Vacant Unit Rule, 11.i.

Item 11f. Failure to satisfy the minimum set-aside requirement

- Minimum Set-Aside Requirement
- Over Income Household
- Expand sample
- First Year Violation
- Subsequent Year Violation
- Multiple-building project

29

Item 11f. Failure to satisfy the minimum set-aside requirement for the first year of the credit period results in the permanent loss of the entire credit. Failure to maintain the minimum set-aside requirement for any year after the first year of the credit period results in recapture of previously claimed credit and no allowable credit for that tax year. - 30 reported

-A property is complying if the elected minimum set aside requirement (20/50 or 40/60) or average income test and the elected deep-rent skewing requirement (15/40) is met by the end of the first year of the owner's credit (and compliance) period and continues to be met each year throughout the compliance period. The LIHC residential units must also be rent restricted. The choice of minimum set-aside also establishes the income limit and rent limit applicable to low-income units in the project.

(Note: Form 8823 will not be updated to address average income test specifically. The non-compliance should be reported like the other set aside non-compliance issues. We are awaiting clarifying guidance from Treasury, so there is a possibility that Form 8823 can be updated once that guidance is issued. However, for now if you have a violation of the minimum set aside you would report it to IRS under 11f.

including average income non-compliance.

-You may have to expand the sample of units reviewed when significant issues are identified related to over income households in the initial sample, so that a determination can be made if the project still meets the minimum set aside requirements.

-In the event that the owner did not lease the minimum number of units to income eligible tenants by the end of the first year of the credit period., then the noncompliance results in the failure to meet the minimum set-aside for the first year of the credit period. **Therefore, the taxpayer cannot claim the LIHC related to that allocation; the date of noncompliance is the last day of the taxable year of the first year of the credit period.** If minimum set-aside not met in the first year of the credit period then also report violation Category 11p, Project is no longer in compliance nor participating in the program, assuming Form 8609 has been filed with the IRS

-If the project meets the minimum set-aside by the end of the first year, but fails to meet the minimum set-aside at the close of a subsequent taxable year in the compliance period, the entire credit is lost for that year. The date of noncompliance is the last day of the taxable year for which the minimum set-aside was not met and the project is back in compliance for the taxable year in the compliance period in which the minimum set-aside is met, determined as of the close of that taxable year

-Each building is considered a separate project under IRC §42(g)(3)(D) unless, before the close of the first calendar year in the project period, each building that is, or will be, part of a multiple-building project is identified as such by checking the “yes” box on line 8b of Form 8609 and attaching the statement described in the instructions for line 8b.

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Item 11g. - Gross rent(s) exceed tax credit limits

- Rent not restricted
- Fees
- Non-compliance dates
- Related violations

30

Item 11g. - Gross rent(s) exceed tax credit limits – 299 reported

-The noncompliance issue is identified when the gross rent is not restricted by the IRC 42 limits that were elected and are irrevocable on Form 8609 Line 10 a-d.

-Charges for non-optional services such as a washer and/or dryer hookup fee and built-in/on storage sheds would always be included within gross rent. No separate fees should be charged for tenant facilities (i.e., pools, parking, recreational facilities) if the costs of the facilities are included in eligible basis. If these requirements related to fees are violated then it is a noncompliance issue that may result in the units not being rent restricted and violations of the minimum set aside and other provisions.

-Overcharging for rent for one month causes **non-compliance for the whole tax year** and if corrected then back in compliance the first day of the next tax year. Overcharging of rent may lead to violation of the minimum set aside percentage because the units being charged the excess rent are no longer LIH units when the rent is being overcharged.

-This non-compliance issue results in the rent not being restricted, so it will affect

other non-compliance issues in combination such as minimum set-aside, Next Available Unit Rule, vacant unit rule, and utility allowance.

Item 11h. - Project not available to the general public

- Attach explanation
- Expand scope of review
- Social organization members
- Employees
- Exceptions
- Hospital or care facility
- Significant services other than housing
- No good cause eviction
- Reporting of Civil Rights/Fair Housing Act violations

31

Item 11h. - Project not available to the general public (see instructions) (attach explanation) All units in the building must be for use by the general public (as defined in Regulations section 1.42-9 and further clarified in section 42(g)(9)). - 16 reported

-State Housing Agencies must provide an explanation with the Form 8823 to determine the reason for the reporting of the noncompliance related to the project not being available for General-Public Use. The failure of LIHC buildings to comply with the general-public use requirements will result in the denial of low-income housing credits on a per-unit basis. A unit is out of compliance starting on the date of the event triggering the noncompliance. If violations are found with the initial sample of units reviewed, then expand the scope of the review to include additional units.

-Under Treas. Reg. §1.42-9(b), if a residential unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general-public and is not eligible for credit under IRC §42. However, as clarified in IRC §42(g)(9), a qualified low-income project does not fail to meet the general-public use requirement solely because of occupancy restrictions or preferences that favor tenants (1) with special needs, (2) who are members of a

specified group under a Federal program or state program or policy that supports housing for such a specified group, or (3) who are involved in artistic or literary activities.

-In addition, any residential rental unit that is part of a hospital, nursing home, sanitarium, life care facility, retirement home providing significant services other than housing, dormitory, trailer park, or intermediate care facility for the mentally and physically disabled is not for use by the general-public.

-Residential rental units must be for use by the general-public. In addition, the owner must not evict, non-renew the lease for, or otherwise terminate the tenancy of, an existing tenant of any low-income unit for other than good cause which is defined in the Regulations. This issue comes up the most where the owner is trying to remove a specific tenant.

-LIHC properties are subject to Title VIII of the Civil Rights Act of 1968,¹ which makes it unlawful to discriminate in any aspect relating to the sale or rental of dwellings, in the availability of transactions related to residential real estate, or in the provision of services and facilities in connection therewith because of race, color, religion, sex, disability, familial status, or national origin.

-The State agencies will also need to consider whether the problem is systemic and whether owner has met the minimum set aside under IRC §42(g)(1).

Item 11i. - Violation(s) of the Next Available Unit Rule

- Rent available units to Low Income Tenants
- Unit smaller, or comparable size
- Over income units retains low income designation
- Must be rent restricted
- Violation of minimum set-aside possible

32

Item 11i. - Violation(s) of the Next Available Unit Rule under section 42(g)(2)(D)(ii). – 13 reported

-The Next Available Unit Rule under IRC §42(g)(2)(D) states that if the income of the occupants of a low-income unit increases above 140 percent of the income limit (or 170 percent in deep rent skewed developments), the unit will continue to be treated as a low-income unit if the occupants initially met the income limitation and the unit continues to be rent restricted.

-If the income of the occupants of the unit increases above 140 percent of the applicable income limitation, the unit will cease to qualify as a low-income unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds the income limitation.

-All units affected by a violation of the Next Available Unit Rule may not be included in qualified basis. When the percentage of low-income units in a building again equals the percentage of low-income units on which the credit is based, the full availability of the credit is restored. Thus, when the “Noncompliance corrected” box is checked by the State Agency, you must ensure that the percentage of low-income units in the

building equals the percentage on which the credit is based and there is no additional violation to report such as minimum set aside.

Item 11j. - Violation(s) of the Vacant Unit Rule

- Rent to qualified low income households first
- Review advertising practices
- Reasonable attempts
- Violation of minimum set-aside possible

33

Item 11j. - Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(ix) – 49 reported

Definition of Vacant Unit Rule - If a low-income unit in the project became vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income.

Treas. Reg. §1.42-15(c) states that a unit is not available when the unit is no longer available for rent due to contractual arrangements that are binding under local law, such as a reservation entered into between a building owner and a prospective tenant. See Rev. Rul. 2004-82, Q&A #10.

-The State Agency is responsible for reviewing the owner's compliance with the Vacant Unit Rule that includes a review of the owner's advertising practices to verify that they are making reasonable efforts to rent vacant units to qualified low income households before renting any vacant units to nonqualifying tenants.

-Treas. Reg. §1.42-15(c) states that a unit is not available when the unit is no longer available for rent due to contractual arrangements that are binding under local law. Therefore, if a vacant unit is rented to a nonqualifying tenant before renting available units to qualified low income households then they are not in compliance with this Regulation.

Item 11k. - Owner failed to execute and record extended-use agreement

- Land Use Restrictive Agreement (LURA) not executed and recorded
- Pre-arranged deed in lieu of foreclosure
- New owner agreement
- One year correction period
- Written notification to owner

34

Item 11k. - Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J)

Section 42(h)(6) requires owners of tax credit properties to enter into an extended use agreement with the state agency that allocated the credits to the project.

Building owners must agree to a long-term commitment beginning on the first day of the 15-year compliance period and ending on the later of (1) the date specified by the state agency in the agreement or (2) the date which is 15 years after the close of the 15-year compliance period. - 1 reported

-This non-compliance issue must be reported when an extended low-income housing commitment is not in effect; i.e., the extended use agreement is not executed, is not recorded, is not part of the sale agreement with a new owner, if within the 15-year compliance period, or fails to meet the requirements of IRC §42(h)(6).

-Disposition such as a deemed foreclosure that was negotiated prior to the sale should be reported as a noncompliance issue.

-New owners that purchase the property after the 10-year credit period, must agree to a long-term commitment to maintain the property as a low-income housing project beginning on the first day of the 15-year compliance period and ending on the later of (1) the date specified by the state agency in the agreement or (2) the date which is 15 years after the close of the 15-year compliance period.

-If the noncompliance is not remedied within one year after the notification, the taxpayer loses the credit for past taxable years until the taxable year in which the

extended use agreement is properly in effect.

-The one-year period for correcting the noncompliance begins when the owner is notified that an extended use agreement has not been properly executed and/or recorded. The state agency should provide written notification of the noncompliance immediately and document the owner's receipt. The notification should identify the problem and corrective action needed, provide an explanation, that the date of the letter starts the one-year period for correcting the noncompliance and the Form 8823 should have a copy of the letter attached.

11l. - Low-income units occupied by nonqualified full-time students

- Occupied entirely by FT students
- Five or more months
- Failure to verify student status
- Out of compliance date
- In conjunction with other violations

35

11l. - Low-income units occupied by nonqualified full-time students – 137 reported

-A unit is out of compliance when it is occupied entirely 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 one of the exceptions identified in IRC §42 (i)(3)(D). Also, a married couple that is entitled to file a joint tax return, but has not filed one, still satisfies the exception under IRC §42(i)(3)(D)(ii)(II).

-IRC 152(f)(2) **Student defined.**--The term “student” means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins--

(A) is a full-time student at an educational organization described in [section 170\(b\)\(1\)\(A\)\(ii\)](#), or

(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in [section 170\(b\)\(1\)\(A\)\(ii\)](#) or of a State or political subdivision of a State.

-A unit is also considered out of compliance if the owner 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.

-The out of compliance date is the first day of the fifth month during the calendar year that the full-time student attended a qualifying educational organization.

-This non-compliance issue may be identified in conjunction with 11.f. Project Failed to Meet Minimum Set-Aside Requirement (20/50, 40/60, and Average Income Test), 11.i. Violation(s) of the Next Available Unit Rule under Section 42(g)(2)(D)(II) and 11.j. Violation(s) of the Vacant Unit Rule Under Reg [1.42-5@1\(IX\)](#).

11m. - Owner did not properly calculate utility allowance

- Utility allowance estimate
- Building by building basis
- Rents reduced by utility allowance
- Maximum Gross Rent exceeded
- In conjunction with other violations

36

11m. - Owner did not properly calculate utility allowance – 178 reported

-An allowance for the cost of any utilities, other than telephone, cable television, or Internet, paid directly by the tenant(s) and not by or through the owner of the building is included in the computation of gross rent under IRC §42(g)(2)(B). A separate estimate is computed for each utility and different methods can be used to compute the individual utility allowances. The utility allowance is computed on a building-by-building basis.

-Low-income housing projects are compliant when the appropriate utility allowance is used, the utility allowance is properly calculated, rents are reduced for a utility allowance when utilities are paid directly by the tenant, and the maximum gross rent is not exceeded.

-Noncompliance should be reported whenever the rent paid by the tenant plus the correct utility allowance exceeds the maximum gross rent limit.

-Noncompliance should not be reported if regardless of the error, correcting the utility allowance does not cause the rent to exceed the gross rent limit, or

noncompliance is corrected before the owner is notified of the state agency's review.

-The utility allowance requirement is a building-based rule. If the owner is noncompliant, the noncompliance will likely affect all the low-income units in the building. In which case, consideration should be given to whether the owner met the minimum set-aside under IRC §42(g)(1).

-Therefore the owner may have other reportable violations such as 11.f. Project Failed to Meet Minimum Set-Aside Requirement (20/50, 40/60, Average Income Test) and/or 11.g. Gross Rent(s) Exceed Tax Credit Limits.

11n. - Owner has failed to respond to agency requests for monitoring reviews

- Denial, or unreasonable postponement
- Date of noncompliance
- Possible removal from LIHC program
- In conjunction with other violations

37

11n. - Owner has failed to respond to agency requests for monitoring reviews – 26 reported

-An owner is compliant when requests for site visitations and access to tenants' records are honored without unreasonable postponements. An owner is out of compliance when requests for site visitations or tenant file inspections are denied or unreasonably postponed.

-A state agency should accommodate the owner's valid needs to reschedule a site visit or tenant file review, but should not allow owners to delay or circumvent compliance monitoring reviews. The date of noncompliance is the earlier of the date (1) the owner refused to allow a site visitation or access to tenants' records or (2) first postponed the site visit or access to tenant's records.

-State agencies may remove a LIHC property from the program if the owner fails to respond to repeated notices for monitoring reviews. The owner is back in compliance when the agency performs the site visit and/or reviews the tenants' files.

-This issue may be identified in conjunction with 11.c. - Violations of the UPCS or

Local Inspection Standards that indicates a casualty event, 11.p. Project is no Longer in Compliance nor Participating in the Section 42 Program, or 13. a Disposition.

11o. - Low-income units used on a transient basis

- Attach explanation
- Explain issue and severity
- Lease less than 6 months
- Exceptions
 - Transitional housing – homeless
 - Single Room Occupancy units
- Date of noncompliance
- In conjunction with other violation

38

11o. - Low-income units used on a transient basis (attach explanation) – 1 reported
-Attach an explanation of the issue and severity of the non-compliance.

-This category is used to report noncompliance when units have been used on a transient basis. Generally, the length of the initial lease agreement determines whether use is transient. A unit is non-transient if the initial lease term is six months or more.

-There are two exceptions to the general rule that the initial lease term must be 6 months or longer.

-Certain transitional housing for the homeless may be considered used other than on a transient basis provided the residential rental unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building which is used exclusively to facilitate the transition of homeless individuals to independent living within 24 months, and in which a government entity or qualified nonprofit organization provided such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

-Single Room Occupancy (SRO) units which permit the sharing of kitchen, bathroom, and dining facilities, shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

-The out of compliance date is the effective date of the initial tenant income certification. A unit is out of compliance if no lease is on file for the tenant, or the tenant's initial lease term is not at least six months. Noncompliance is corrected when a lease with a term of at least six months is executed. The correction date is the effective date of the new lease.

-The issue may be identified in conjunction with 11.h. - Project Not Available to the

General Public.

Item 11p. - Building is no longer in compliance nor participating in the section 42 program

- Entire building
- Not going to be corrected
- No credit in the future years
- Notify IRS of fully returned credits – attach explanation
 - Explain why credits returned
 - Why property did not qualify
 - Last year property in service
- Partial returned credits – amend 8610 and 8609
- Date of noncompliance
- In conjunction with other violations

39

Item 11p. - Building is no longer in compliance nor participating in the section 42 program (attach explanation) – 2 reported

-The non-compliance should be used to notify the Internal Revenue Service that a determination was made that an LIHC building is entirely out of compliance and will not be complying at any time in the future resulting in a recapture event.

-No credit is allowable in the remaining years of the credit period, even if the building complies with all the requirements of IRC §42.

-Under certain circumstances, a state agency may obtain a return of previously allocated low-income housing credits. If a credit is returned within 180 days following the close of the first taxable year of a building's credit period as provided in Treas. Reg. §1.42-14(d)(2)(ii), and a Form 8609, Low-Income Housing Credit Allocation and Certification, has been issued for the building, the state agency must notify the Internal Revenue Service that the credit has been returned. Review database for an amended 8609 to determine if the credit was returned and the non-compliance issue is not applicable.

-If only part of the credit has been returned, this notification requirement is satisfied when the state agency attaches to an amended Form 8610, Annual Low-Income Housing Credit Agencies Report, the original of an amended Form 8609 reflecting the correct amount of credit attributed to the building together with an explanation for filing of the amended forms. The state agency must send a copy of the amended Form 8609 to the owner of the building.

inspections by the HFA.

Item 11q. - Other noncompliance issues

- Attach explanation
- Non-profit organization
- Lack of material participation
- Day to day operations
- Not regular, continuous, and substantial

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Item 11q. - Other noncompliance issues (attach explanation) - 287 reported

-Pursuant to IRC §42(h)(5)(D), the ownership and material participation test can be met by the organization if it owns stock in a qualified corporation that satisfies the ownership and material participation test. A qualified corporation must be a corporation that is 100 percent owned at all times during its existence by one or more qualified nonprofit organizations.

-For purposes of reviewing projects for compliance with the requirements of IRC §42(h)(5) during the 15-year compliance period, the state agencies' responsibility is limited to consideration of whether the qualified nonprofit entity is materially participating in the operation of the project; i.e., both management decision making and the day-to-day operations. To materially participate, the qualified nonprofit must be engaged in the activities on a basis that is regular, continuous, and substantial within the meaning of IRC §469(h)(1) for that year.

-LIHC projects are considered back in compliance in a taxable year when a qualified nonprofit organization owns an interest in the project and satisfies the material participation test set forth in IRC §469(h)(1) for that taxable year.

Item 13. Building Disposition

- Four categories of disposition
 - Sale
 - Foreclosure
 - Destruction
 - Other
- Provide Date of Disposition and New Owner Information
- In conjunction with other violations

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Item 13. Building Disposition – 1369 reported

Report all dispositions of low-income buildings that will not continue to be operated as a qualified low-income building after the disposition so that the IRS can determine whether the taxpayer has complied with the requirements of IRC §42(j);

Four categories of dispositions:

-Sale, including Fee Title Sale, or Termination of the Partnership

- Foreclosure, when the owner is deemed to have made a sale of the property for the outstanding amount of the mortgage debt. Also, when there is a Deed of Property In lieu of Foreclosure the owner voluntarily conveys the property to the mortgage holder to avoid foreclosure proceedings.

- Destruction is related to a building's physical structure, and not to the ownership interest in the building. The destruction affects the building in its entirety, i.e., the eligible basis of the property is reduced to \$0. The destruction is permanent and the building is not expected to operate as a tax credit project again.

– Any event, not listed above, which results in the disposition of a low-income housing credit unit, building, or property. The owner of a low-income housing building is the entity identified on the Form 8609. State agencies should confirm that the ownership has not changed as part of their monitoring and inspection responsibilities.

-This non-compliance issue may be identified in conjunction with 11.c. that is shown in the explanations as a casualty event, a disposition by foreclosure, destruction, or other where the building is found to be uninhabitable based on local health, safety, and building codes, 11.e. - Changes in Eligible Basis or the Applicable Percentage, 11.f. Project Failed to Meet Minimum Set-Aside Requirement (20/50, 40/60, Average Income Test), 11.k. Owner Failed to Execute & Record Extended-Use Agreement within Time Prescribed by Section 42(H)(6)(J), 11.n. when the owner is not responding to requests for inspections by the HFA, and/or 11.p. Project is no Longer in Compliance nor Participating in the Section 42 Program.

Questions?