

Key Housing Credit Compliance Issues

April 8, 2014



IRC §42 Audit Technique Guide Violence Against Women Act Acquiring Existing IRC §42 Buildings

Presented by

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IRC §42 Audit Technique Guide

- ▶ Help IRS examiners conduct audits by identifying issues unique to specific industries.
- ▶ Draft ATG released for public comment in December 2013; comments due 3/28/2014.
- ▶ Draft ATG reviewed within IRS by examiners and other interested parties.
- ▶ Comments will be considered, the ATG updated, then made available on www.irs.gov.



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- ▶ Does not replace the Form 8823 Guide (intended for state housing agencies)
 - ▶ ATG & Form 8823 Guide are complementary.
 - ▶ ATG cross-references Form 8823 to avoid duplication.
 - ▶ Significant difference: ATG explains tax consequences of noncompliance
 - ▶ Applicable Fraction (Chapter 12)
 - ▶ Helpful explanations of documentation requirements



Violence Against Women Act

LAW: An applicant for, or tenant of, housing assisted under a **covered housing program** may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.



- ▶ IRC §42 is a “covered program.”
- ▶ Section 601(b)(3)(C) of the Act makes clear that nothing in the Act or the amendments in the Act shall be construed to disqualify an owner, manager, or other individual from participating in or receiving the benefits of the low-income housing tax credit program under IRC §42 because of noncompliance with the provisions of the Act.



- ▶ State agencies are not obligated under Treas. Reg. §1.42-5 to either monitor for compliance with the Act or report noncompliance to the IRS, and
- ▶ The IRS does not (at this time) plan to issue guidance regarding compliance with the Violence Against Women Act
- ▶ Because there are no tax consequences if the taxpayer fails to comply with the Act.



Administration's Legislative Proposal:

1. Protection as part of the Extended Use Agreement (for all units)
2. Could not evict or deny housing; provide for bifurcating leases
3. Enforceable by any tenant (past, present, or prospective)
4. Occupancy restrictions or preferences for domestic abuse victims would not violate the general public use rule
5. Protections included in agreements executed after enactment or if agreement is otherwise modified after enactment.



Acquiring Existing IRC §42 Buildings

Beginning with allocations of credit after 1989, owners of LHC buildings are required to enter into extended use agreements with the state agency allocating the credit. Owners make a long-term commitment to maintain the buildings as low-income housing for at least 30 years beginning with the first day of the 15-year compliance period.



Households determined to be income-qualified for purposes of the IRC §42 credit during the 15-year compliance period are concurrently income-qualified households for purposes of the +30-year extended use agreement. As a result, any household determined to be income qualified at the time of move-in for purpose of the extended use agreement is a qualified low-income household for any subsequent allocation of IRC §42 credit.



Owner Receives Additional Credit for Rehabilitation

An owner received IRC §42 credits to construct new low-income housing. The owner placed the buildings in service in 1991 and started claiming credits the same year. The 15-year compliance period ended December 31, 2005. In 2007, the owner applied for and received an allocation of credit to rehabilitate the existing low-income buildings. The rehabilitation is completed and the owner starts claiming the credit in 2009.



On February 1, 2004, John and Mary are determined to be income-qualified and move into a low-income unit project. John and Mary timely complete their income recertification each year 2005 through 2008. The unit has always qualified as a low-income unit, except when the unit was not suitable for occupancy during the rehabilitation period.

The unit is a low-income unit on January 1, 2009, when the owner (a calendar year taxpayer) begins claiming the credit. If the unit was determined to be an over-income unit at the time of the household's last income recertification in January of 2008, then the owner is subject to the Available Unit Rule.

NOTE: Similarly, vacant units previously occupied by income-qualified households continue to qualify as low-income units if the units are suitable for occupancy. However, the owner is subject to the Vacant Unit Rule.

New Owner Receives Credit for Acquisition and Rehabilitation

Owner ABC received IRC §42 credits to construct new low-income housing. ABC placed the buildings in service in 1991 and started claiming credits the same year. The 15-year compliance period ended December 31, 2005. In 2006, ABC sold the project to XYZ, who simultaneously received an allocation of acquisition and rehabilitation credit. The rehabilitation was completed and XYZ started claiming the credit in 2008. From the time of acquisition until a new extended use agreement is recorded, XYZ is subject to the extended use agreement between ABC and the state agency.



On February 1, 2004, John and Mary are determined to be income-qualified and move into a low-income unit project. John and Mary timely complete their income recertification each year 2005 through 2007. The unit has always qualified as a low-income unit, except when the unit was not suitable for occupancy during the rehabilitation period.

Based on the 2007 annual income recertification, the unit is a low-income unit at the beginning of XYZ's credit period on January 1, 2008, when XYZ (a calendar year taxpayer) begins claiming the credit. XYZ should test income at the beginning of the credit period.

NOTE: Vacant units previously occupied by income-qualified households are not low-income units on January 1, 2008.

Key Points:

- ▶ Tenants “grandfathered” only if a qualified low-income household for IRC §42 purposes.
- ▶ Low-income tenants for other affordable housing programs are not grandfathered.
- ▶ Treatment of vacant units is dependent on whether the building’s ownership changed.
- ▶ See Form 8823 Guide, Chapter 4, page 4-26.



Thank You





8609 Issues on “Seasoned Properties” Compliance Rules after Year 15

*Gwen Volk, Director of Affordable Housing Compliance
LBK Management Services*



8609 Issues on “Seasoned” Properties

Seasoned Property:

- ▶ Property has been in the program a number of years
- ▶ May be approaching Year 15
- ▶ State monitoring of the property is well-established

Major Event Occurs:

- ▶ Change of Ownership and Management
- ▶ Change of Management only

Best Practice: Review 8609 form and other documents.
Compare to actual procedures and state monitoring.



8609 Issues on “Seasoned” Properties

Case Study: Shady Grove Apartments

Building Address



BIN #



8(b)

election



Minimum Set-aside



Form 8609 Low-Income Housing Credit Allocation and Certification
 (Rev. December 2013) Department of the Treasury Internal Revenue Service
 OMB No. 1545-0088
 Information about Form 8609 and its separate instructions is at www.irs.gov/form8609.

Part I Allocation of Credit

Check # Addition to Qualified Basis Amended Form

A Address of building (do not use P.O. box) (see instructions)
 1053 Shady Grove Lane
 Anytown, Anystate 11111

B Name and address of housing credit agency
 Anystate Housing Finance Agency
 9877 Corporate Drive
 Anytown, Anystate 2222

C Name, address, and TIN of building owner receiving allocation
 Shady Grove Apartments LP
 388 Republic Road - Suite 1
 Anytown, Anystate 3333

D Employer identification number of agency
 98-7654321

E Building identification number (BIN)
 12-3456789

TIN 12-3456789 AS-99-00045

1a Date of allocation	12/31/99	b Maximum housing credit dollar amount allowable	46,543.59
2 Maximum applicable credit percentage allowable (see instructions)			8.540 %
3a Maximum qualified basis			545,006.81
b If the eligible basis used in the computation of line 3a was increased, check the applicable box and enter the percentage to which the eligible basis was increased (see instructions)			1 %
4 Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-)			0.00 %

5 Date building placed in service 12/31/01

6 Check the boxes that describe the allocation for the building (check those that apply):
a Newly constructed and federally subsidized **b** Newly constructed and **not** federally subsidized **c** Existing building
d Sec. 42(e) rehabilitation expenditures federally subsidized **e** Sec. 42(e) rehabilitation expenditures **not** federally subsidized
f Not federally subsidized by reason of 40-50 rule under sec. 42(i)(2)(E) **g** Allocation subject to nonprofit set-aside under sec. 42(h)(5)

Signature of Authorized Housing Credit Agency Official—Completed by Housing Credit Agency Only
 Under penalties of perjury, I declare that the allocation made is in compliance with the requirements of section 42 of the Internal Revenue Code, and that I have examined this form and to the best of my knowledge and belief, the information is true, correct, and complete.
 Signature of authorized official: Martin Fairweather, Executive Director
 Name (please type or print): Martin Fairweather, Executive Director
 Date: _____

Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period

7 Eligible basis of building (see instructions) 545007

8a Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? 545007

9a If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)? Yes No

b For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low income units under section 42(d)(3)(B)? Yes No

10 Check the appropriate box for each election:
Caution: Once made, the following elections are irrevocable.
a Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)) Yes No
b Elect not to treat large partnership as taxpayer (section 42(j)(5)) Yes No
c Elect minimum set-aside requirement (section 42(g)) (see instructions) 20-50 40-60 25-60 (N.Y.C. only)
d Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions) 15-40

Under penalties of perjury, I declare that I have examined this form and accompanying attachments, and to the best of my knowledge and belief, they are true, correct, and complete.
 Signature: _____ Taxpayer identification number: _____ Date: _____
 Name (please type or print): _____ First year of the credit period: _____

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 63881U Form 8609 (Rev. 12-2013)



8609 Issues on “Seasoned” Properties

Case Study: Shady Grove Apartments

8609 Form excerpt: 8b election/minimum set-aside

Part II First-Year Certification — Completed by Building Owners with respect to the First Year of the Credit Period	
7 Eligible basis of building (see instructions)	7 545007
8a Original qualified basis of the building at close of first year of credit period	8a 545007
b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 
9a If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
b For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low income units under section 42(d)(3)(B)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
10 Check the appropriate box for each election: Caution: <i>Once made, the following elections are irrevocable.</i>	
a Elect to begin credit period the first year after the building is placed in service (section 42(f)(1))	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
b Elect not to treat large partnership as taxpayer (section 42(j)(5))	<input type="checkbox"/> Yes
c Elect minimum set-aside requirement (section 42(g)) (see instructions)	<input type="checkbox"/> 20-50 <input checked="" type="checkbox"/> 40-60 <input type="checkbox"/> 25-60 (N.Y.C. only)
d Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions)	<input type="checkbox"/> 15-40



8609 Issues on “Seasoned” Properties

Case Study: Shady Grove Apartments

- ▶ Unit Data Reports show % of Units Qualified as follows:
 - BIN #AS-99-00045 – 100% (10 of 10 units)
 - BIN #AS-99-00046 – 30% (3 of 10 units)
 - BIN #AS-99-00047 – 25% (2 of 8 units)
- ▶ Total Qualified Units in Shady Grove = 15 of 28 (53.57%)
- ▶ All BINs were placed in service in 2001 (per 8609)

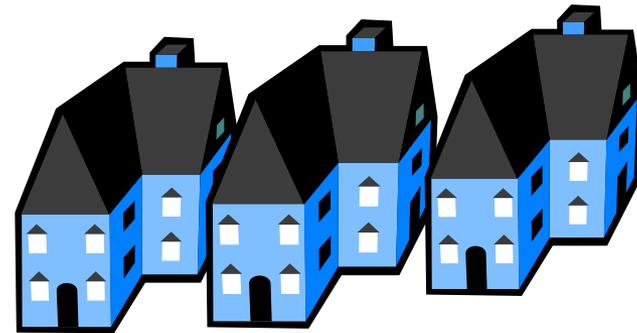


8609 Issues on “Seasoned” Properties

Case Study: Shady Grove Apartments

- ▶ Is Shady Grove in Compliance with its Minimum Set-Aside?
 - Housing Finance Agency says project is in compliance
 - There are no outstanding 8823’s filed with the IRS
 - Election under 8(b) “suggests” it is not in compliance

- ▶ Other Implications:
 - Vacant Unit Rule
 - Annual Recertification



- ▶ What should the New/Prospective Owner/Manager do?



8609 Issues on “Seasoned” Properties

Case Study: Shady Grove Apartments

- ▶ State On-Line Reporting System and Owner Reports show the following addresses for the three buildings:

BIN #AS-99-00045 – 1053 Shady Grove Lane

BIN #AS-99-00046 - 1054 Shady Grove Lane

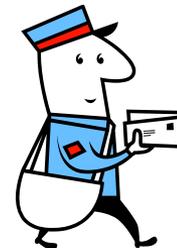
BIN #AS-99-00047 - 1055 Shady Grove Lane

- ▶ Building Signs and rent roll show the following addresses for the three buildings assigned by the USPS/City of Any Town

BIN #AS-99-00045 – 1053 Shady Grove Lane

BIN #AS-99-00046 - 1054 Shady Grove Lane

BIN #AS-99-00047 - 1101 Shady Grove Lane



- ▶ What should the New/Prospective Owner/Manager do?



8609 Issues on “Seasoned” Properties

Case Study: Shady Grove Apartments

- ▶ State On-Line Reporting System and Owner Reports show the following unit configurations for the three buildings:

BIN #AS-99-00045 – 5-1 BR and 5-2 BR Units, total of 10

BIN #AS-99-00046 - 10 -1 BR units

BIN #AS-99-00047 - 5-1 BR and 3–2 BR Units, total of 8

- ▶ As shown on the Rent Roll the actual unit configuration of these building is as follows:

BIN #AS-99-00045 – 5-1 BR and 3-2 BR Units, total of 8

BIN #AS-99-00046 - 10 - 1 BR units

BIN #AS-99-00047 - 5-1 BR and 5–2 BR Units, total of 10

- ▶ What should the New/Prospective Owner/Manager do?



8609 Issues on “Seasoned” Properties



Lessons to be Learned from Shady Grove:

1. Ask to see the documents before the deal is done.
2. Ask a lot of questions.
3. When some or all information is not made available prior to takeover, immediately compare the documents to the realities when the changeover occurs.
4. Confirm accuracy with state agency when appropriate.
5. Report concerns to the Owner.
6. Suggest solutions where possible.



Compliance Rules after Year 15

IRS Reporting terminates at year 15 – both for the Owner and for the State Monitoring Agency

- ▶ Owner no longer reports to the IRS
- ▶ State no longer files 8823's with the IRS

The Use Agreement remains in force for the Extended Use Period and must:

- ▶ Specify that the applicable fraction in the extended use agreement will be maintained
- ▶ Prohibit termination for other than good cause
- ▶ Prohibit refusal to lease to Section 8 Voucher Holders
- ▶ Be binding on all successors of the taxpayer



Compliance Rules after Year 15

What other rules apply?



- ▶ Will depend on:
 - The State Agency
 - The Mortgage financing from housing finance agencies or other mission-oriented lenders
 - Subordinate debt or grant financing from state or federal sources (including HOME or CDBGs) with long-term use restrictions



Compliance Rules after Year 15

Where can you find the rules?

- ▶ Review Extended Use Agreement
- ▶ Review financing documents for other funding sources
- ▶ Check state agency's compliance manual or other "Year 15-specific" handbook or notices
- ▶ Ask: "Is anything different about the way you apply and/or enforce the rules of the program after Year 15?"
- ▶ For any deviation from standard Section 42 compliance rules, get it in writing and confirm with Owner.

A survey of owners⁰ indicated that some states use "the honor system" after year 15, others continue the same rigorous oversight as before.

⁰ HUD Office of PDR August, 2012



Compliance Rules after Year 15

Examples of State to State Variations

The Section 42 Student Rule:

- ▶ Example 1: Student rule remains in force as stipulated under Section 42
- ▶ Example 2: May rent 15% of tax credit qualified units to otherwise qualified Full-Time-Student Households, but must not directly market units to students.



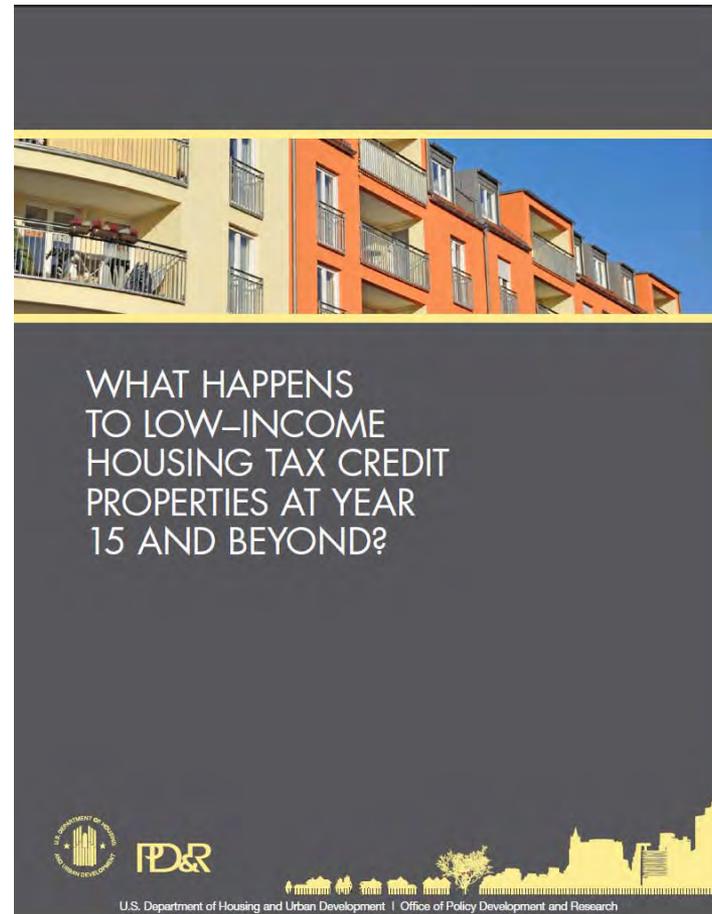
State Agency Compliance Monitoring:

- Example 1: Monitoring and reporting continue as before
- Example 2: Owners of Post-Year 15 properties may apply for a waiver to some monitoring and reporting requirements – includes a reduction in the State Monitoring Fee - waiver is contingent on past and future demonstrated compliance



Compliance Rules after Year 15

- ▶ For more information on what happens to LIHTC properties at Year 15 and beyond – 180 pages
- ▶ Developed by HUD's Office of Policy Development and Research in August 2012
- ▶ Chapter 4 discusses “Changes in Use Restrictions”
- ▶ Link to Download:
www.huduser.org/publications/pdf/what_happens_lihtc.pdf



Property Takeovers

Stacy Day, Vice President of Compliance



Reasons for Management Takeovers

- ▶ New Owner
- ▶ Acquisition/Rehab
- ▶ Owner chooses new 3rd party management agent
- ▶ Poor oversight by prior management agent



Getting Started:

- ▶ Confirm goals with the owner
- ▶ Request pertinent documents
- ▶ Communicate with the residents
- ▶ Contact HFA
- ▶ Determining Current Compliance Status
 - ▶ File Audit
 - ▶ Physical Audit
- ▶ Correcting Non Compliance
- ▶ Property Staffing



Confirm Goals with Owner

- ▶ Non-Compliance Concerns?
 - ▶ Physical
 - ▶ File

- ▶ Leasing Issues?
 - ▶ Low Occupancy
 - ▶ Poor Collections
 - ▶ Marketing is lacking



Request Pertinent Documents

- ▶ Tax Credit Application
- ▶ LURA
- ▶ Regulatory Agreement (agreements for other sources of funding such as Tax Exempt Bonds, HOME Funds, etc)
- ▶ Utility Allowance
- ▶ First Year 8609s (with Part II completed and signed)
- ▶ Copy of last state audit
- ▶ Copy of last AOC and Compliance Report
- ▶ Where are first year files stored?
- ▶ If mixed income community, documentation of the established applicable fraction by building



Communicate with the Residents

- ▶ Notify residents of the change in management agent
 - ▶ Who is the point of contact?
 - ▶ What are the goals of the management transition that will benefit them?
 - ▶ Is there information they need to provide to the new management agent?



Contact HFA

- ▶ Is there an approval process required to manage in the state?
- ▶ Required notification of the management change?
- ▶ Attend State Training
- ▶ State Reporting Requirements
- ▶ State Mandated Compliance Forms
- ▶ Notify local PHA of change for voucher holders



Determining Current Compliance Status

- ▶ Takeover Team?
 - ▶ Assign duties based on strength and determine deadlines
 - ▶ Point person to keep team on task and collect findings
- ▶ Community Staff?
 - ▶ What is priority?
 - ▶ Establish realistic deadlines for completing and include in daily duties



Determining Current Compliance Status

- ▶ **File Audit:**
 - ▶ Section 42 Eligibility (Income, Rents, Student Status)
 - ▶ Utility Allowance Confirmation
 - ▶ State requirements
 - ▶ Additional set asides
 - ▶ Resident services
 - ▶ Status of Recerts
 - ▶ Compliance with other sources of funding
 - ▶ Document file for change in management agent



Determining Current Compliance Status

▶ Physical Audit

▶ Physical Assessment of Program Requirements

- ▶ UPCS
- ▶ ADA
- ▶ Fair Housing
- ▶ UFAS (if federal funds)

▶ Management Issues:

- ▶ Optional Amenities (washer/dryer rental, garages, etc).
- ▶ Number of occupants in the unit
- ▶ Ensure residents are aware of your standards for the condition of the units
- ▶ Notify the residents of how often they can expect physical inspections



Determining Current Compliance Status

▶ Findings

- ▶ Report to owner

- ▶ Discuss plan of action

- ▶ Time Frame

- Set Goals for one week out, two weeks out, one month, etc.

- ▶ Staffing Needs

- ▶ Management agent liability ?

Implementing the Plan

- ▶ **Staffing:**
 - ▶ Keep existing staff?
 - ▶ Good attitude?
 - ▶ Positive relationship with the residents?
 - ▶ Replace Staff?
 - ▶ Poor attitude?
 - ▶ Negative work ethic?

- ▶ **Training:**
 - ▶ LIHTC
 - ▶ Management Policies



Windsor Wire Webinar Series

Student Rules



WINDSOR COMPLIANCE

Greg Proctor

Windsor Compliance



Due Diligence After Move-In

- Getting approval from Compliance is just the beginning
- Many files are pre-approved
- Pre-approval does not mean files will be in compliance without proper due diligence



Due Diligence After Move-In

- Lease review
 - Make sure all household members have properly signed and dated.
- Signatures on Tenant Income Certification
 - Confirm that the TIC's are completed.
 - Review Move-in date to lease date to signature date.



Due Diligence After Move-In

- Onsite File Review
 - Review the files on-site to ensure that electronic paperwork agrees with what is in the file
 - Review for signs of “shadiness”
 - Review the files as the Regulatory Agency would



Due Diligence After Move-In

- Comparison to software
 - Review your move-ins and move-outs through a rent roll or resident activity report.
 - Make sure that all households have been approved and not moved in under the Radar.
 - This is a good time to back sure your set-asides are met



Due Diligence After Move-In

- Walk in the auditors shoes
 - Get a feel for how the files present themselves
 - Are the paper files well organized or ‘jacked up’?
 - Have unusual issues been addressed?
 - Notes to files
 - Calculator tapes
 - Tabs



Due Diligence After Move-In

- Take a look from 35,000 feet
 - Make sure you are meeting your set-asides
 - Do you have subsidy or requirements that you are not aware of?
 - Special reporting to investors and agencies
 - Be proactive. Ask questions.

