

Key Credit Compliance Issues

Presenters:


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Documenting Compliance For IRS Audits

Presented by Grace Robertson
 IRS, Program Analyst & Technical Advisor
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IRC §6001

Every person liable for any tax...shall **keep such records**, render such statements, make such returns, and **comply with such rules and regulations** as the Secretary may from time to time prescribe. Whenever...it is necessary, [the Secretary] may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or **keep such records**, as the Secretary deems **sufficient to show** whether or not such person is liable for tax under this title.....

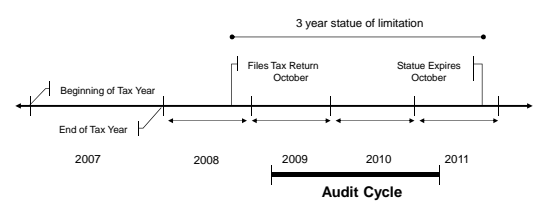


Treas. Reg. §1.6001-1(a)

In general...any person subject to tax under Subtitle A of the Code, or any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are **sufficient** to establish the amount of gross income, deductions, **credits**, or other matters required to be shown by such person in any return of such tax or information.



Audit Life Cycle



The diagram illustrates the audit life cycle over a five-year period from 2007 to 2011. Key events include the 'Beginning of Tax Year' and 'End of Tax Year' for each year. A 'Files Tax Return' event is marked for October 2008. A '3 year statute of limitation' period is shown as a horizontal bar starting from the end of 2008 and ending in October 2011, with 'Status Expires' noted at the end of this period.

The "Big 3" Questions



Low-Income Units

- ▶ Were the units occupied by qualified low-income household?
- ▶ Were the rents correctly restricted?
- ▶ Was the housing suitable for occupancy (unit, buildings and grounds)?



Qualified Low-Income Household (Tenant Income Certification)

- ▶ Complete – income sources and amounts, self-certifications, verifications
- ▶ Household composition
- ▶ Timely – concurrent to move-in
- ▶ Tenant signed certification
- ▶ **Secure confidential information**
- ▶ **Correct income limit for year (updated as needed), location, and placed-in-service date, disaster area relief**



Rents Restricted

- ▶ Maximum gross rent based on income limits
- ▶ Computation of utility (timely updates)
- ▶ **Fees charged and included in rents**
- ▶ **Fees for services in addition to rent**
- ▶ Rent subsidy programs
- ▶ Incidental income (cell phone towers, vending machines, late fees, etc.)



Was Housing Suitable for Occupancy?

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

What if



- ▶ The project was not inspected by a third party?
- ▶ The owner failed to timely submit the annual certification to the state agency?
- ▶ The owner failed to allow a physical inspection during the year?



Some of the "Other" Questions



Questions

- Can you document....
- ▶ compliance with the **Available Unit Rule** every time you rent a market rate unit?
 - ▶ **on-going marketing** efforts to rent vacant units?
 - ▶ with the **Unit Vacancy Rule**?
 - ▶ Can you document compliance with the **General Public Use** and **Transient Use** requirements?



- ▶ 40-50 Rule
- ▶ Deep-Rent Skewing
- ▶ Student Rule
- ▶ First Year Applicable Fraction (computation month-by-month)
- ▶ Rural Housing Rental Assistance
- ▶ Casualty Loss Restoration
- ▶ Correction of Noncompliance (Form 8823)



Remember



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



Thank You
and
Happy Holidays



SHCM Compliance Issues

Referencing the Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report on Noncompliance or Building Disposition



Presented by Gianna Solari



Resident Manager Units

- ▶ The 8823 Audit Guide indicates that charging rent for a Manager's Unit may take away the exempt status of the unit.

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Resident Manager Units

- ▶ If an Owner is charging rent for the Manager Unit, the IRS may determine that the unit is not reasonably required by the project. Such a determination would be made based on the Owner not requiring the Manager to occupy the unit as a condition of employment.

Gross Rent Exceeds Tax Credit Limits

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

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Gross Rent Exceeds Tax Credit Limits

- ▶ Rent Computation:
 - ▶ Units may be residential rental property notwithstanding the fact that services *other than housing* are provided.
 - ▶ However, any charges to Low Income residents for services that are not optional generally must be included in Gross Rent.

Gross Rent Exceeds Tax Credit Limits

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

Verifying Income / Assets

- ▶ Acceptable methods of verifying information include Third Party Verifications, Review of Documents submitted by the resident (i.e. check stubs), and the resident certifications made under penalties of perjury.
- ▶ Third Party Verifications are the most preferred form of documentation.

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Verifying Income / Assets

▶ Footnote 16:

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

Verifying Income / Assets

▶ Child Support:

- ▶ When no documentation is available, the Owner may require the family to sign a certification stating the amount received. The certification must be notarized.
- ▶ A signed, sworn self-certification by a resident is sufficient documentation to show that a resident is not receiving Child Support.
- ▶ A State Agency may require that an Owner obtain documentation, other than the statement described above, to support a resident's Annual Certification.

Military Basic Housing Allowance

- ▶ Military basic housing allowances are also included income. However, under IRC 142 (d)(2)(B)(ii), military basic housing allowance are *not* included in household income if the low-income building is located in any county, or adjacent county, in which is located a qualified military installation

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Military Basic Housing Allowance

- ▶ A qualified military installation is any military installation of facility to which:
 1. not less than 1,000 members of the Armed Forces are assigned, and
 2. the number of members of the Armed Forces assigned to units based out of such qualified military installation, as of June 1, 2008 has increase by not less than 20%, as compared to such number on December 31, 2005.

Military Basic Housing Allowance

- ▶ Qualifying military bases are identified in Notice 2008-79. The list is not meant to be exclusive and any qualified military installation which satisfied the percentage requirements would be eligible to receive similar treatment regardless of its failure to be included in Notice 2008-79 or any subsequent updates.

Military Basic Housing Allowance

- ▶ The qualifying military bases identified are:
 - ▶ Colorado – US Air Force Academy
 - ▶ Hawaii – Fort Shafter
 - ▶ Kansas – Fort Riley
 - ▶ Maryland – Annapolis Naval Station (including US Naval Academy)
 - ▶ South Carolina – Fort Jackson
 - ▶ Texas – Fort Jackson and Fort Hood
 - ▶ Virginia – Sam Neck Training Center Atlantic
 - ▶ Washington – Naval Station Bremerton

Full Time Students

- ▶ IRC 152(f)(2) defines, in part, a “student” as an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization, or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization or of a State or political subdivision of a state. Treas. Reg. further provides that the five calendar months need not be consecutive.

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Full Time Students

- ▶ An educational organization, as defined by IRC, is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

Full Time Students

- ▶ The term “educational organization” includes:
 - ▶ Elementary schools;
 - ▶ Junior / Middle schools;
 - ▶ Senior High schools;
 - ▶ Colleges and Universities;
 - ▶ Technical, Trade & Mechanical schools.
- ▶ Note – it does not include on-the-job training sessions.

Full Time Students

- ▶ Full Time Student Exceptions:
 - ▶ Receiving assistance under Title IV of the Social Security Act (TANF....not SSA or SSI).
 - ▶ Enrolled in a Job Training Program receiving assistance through the Job Training Participation Act (JTPA) or other similar program.
 - ▶ Married and filing (or are entitled to file) a joint tax return.

Full Time Students

- ▶ Full Time Student Exceptions, continued:
 - ▶ Single parents and their children and such single parents are not dependents of another individual, and such children are not dependents of another individual other than a parent of such children
 - ▶ Previously enrolled in the Foster Care Program.

Non-performance of the Extended Use Agreement (EUA)

- ▶ Under IRC 42(h)(6), taxpayers receiving credits must execute an Extended Use Agreement, which is recorded as a restrictive covenant against the property, as provided by state law.
- ▶ The Extended Use Period end on the later of the date specified in the agreement or 15 years after the close of the Compliance Period. At a minimum, the property must be maintained as Low Income housing for 30 years beginning with the first day of the Compliance Period.

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Non-performance of the Extended Use Agreement (EUA)

- ▶ The 8823 Audit Guide states that violations of the Extended Use Agreement (EUA) are *not* to be reported to the IRS.
- ▶ However, violations of the EUA will be tracked by the State, and Owners will be notified of errors.



Guidelines for Determining Noncompliance

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

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Guidelines for Determining Noncompliance

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



Common Certification/Recertification Errors



Presented by:
Anita Moseman



Common Errors

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




Common Errors

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




Common Errors

- ▶ Rushing through the interview
 - ▶ Is information consistent




Common Errors

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




Common Errors

- ▶ Causing more work and time than needed when layered programs exist
 - ▶ Combine verifications, etc.




Common Errors

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




Common Errors

- ▶ Not getting forms signed and dated



Common Errors

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



Common Errors

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



Common Errors

- ▶ Procrastinating on completing annuals



Common Errors

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



Common Errors

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



Thank you!



WINDSOR COMPLIANCE
 SHCM Webinar Series
 Key Housing Credit Compliance Issues

ADA, 504 and Fair
 Housing Accessibility

Presented By: Greg Proctor



Accessibility

- Properties fall under several different laws.
- Federal programs and the age of the property determine which laws apply.



Laws & Regulations Governing Accessibility

- Title VIII of the Civil Rights Act of 1968 ("Fair Housing Act") Race, color, religion, sex and national origin.
- The Fair Housing Amendments Act of 1988 ("Amendments Act" – FHAA) Adds disability and familial status
- The Americans with Disabilities Act ("ADA") of 1990. Public Accommodations.



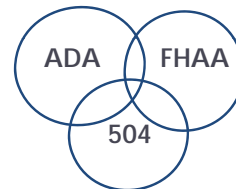
Laws & Regulations Governing Accessibility

- Section 504 of the Rehabilitation Act of 1973 ("Section 504"). Receiving federal assistance.
- State and local codes. Usually more stringent rules apply.



Laws Affecting Housing

Persons with Disabilities have their rights protected under three main laws.



Laws & Regulations Governing Accessibility

- The MOU between Justice, HUD and IRS imposes penalties for non compliance. HUD and Justice will notify the state agency of issuance a finding.
- State Agencies have additional requirements based on QAP. May require more stringent accessibility.



Americans with Disabilities Act

ADA covers public accommodations. The office is considered to be a public accommodation. Watch for obstructions!



ADA

Van accessible spaces are required at office and community rooms (if public accommodation)

(a)
Van Accessible Space at End Row
Fig. A5
Parking Space Alternatives

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Fair Housing Amendments Act Design Requirements

1. Accessible building entrance on accessible route
2. Accessible and usable public and common areas
3. Usable Doors
4. Accessible route into and through the covered unit

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Fair Housing Amendments Act Design Requirements

5. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations
6. Reinforced walls for grab bars
7. Usable kitchens and bathrooms

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FHAA Design Requirement # 1

There should at least one accessible building entrance so that each first floor unit is accessible.

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FHAA Design Requirement # 1

Anything with a change of elevation of more than 5% (1:20) is considered a ramp

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FHAA Design Requirement # 1

Ramps may not have a change of elevation of more than 8.33% (1:12)

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FHAA Design Requirement # 1

Handicap parking spaces require access aisles, proper width and signage



FHAA Design Requirement # 1

Ramps should not encroach on the access aisle at parking



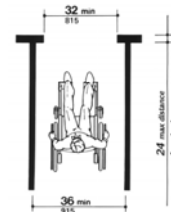
FHAA Design Requirement # 2

Common areas must be on an accessible route



FHAA Design Requirement # 3

Doors through accessible route should have at least a 32" clear opening



FHAA Design Requirement # 4

Thresholds at doors should be no greater than 1/2" in height



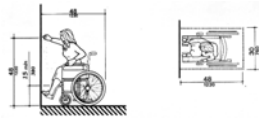
FHAA Design Requirement # 5

Thermostats and controls should be within proper reach ranges



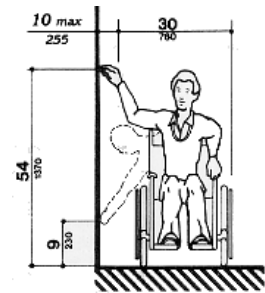
FHAA Design Requirement # 5

Reach ranges vary based on side reach or forward reach



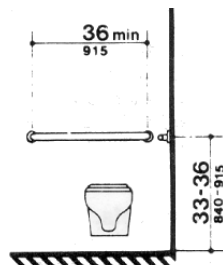
FHAA Design Requirement # 5

Reach ranges vary based on side reach or forward reach



FHAA Design Requirement # 6

There should be no blocking at tub/shower and toilet for installation of grab bars



FHAA Design Requirement # 7

There should be clear space for maneuvering in the bathroom



FHAA Design Requirement # 7

There should be clear space for maneuvering in kitchen





Section 504 of the Rehabilitation Act of 1973

Federally assisted properties built after 1988 (or 1982 for RD properties) are covered under 504





Section 504 Requirements

Doors on accessible route through unit should have lever type door knobs





Section 504 Requirements

Carpeting should be low pile type for ease of mobility





Section 504 Requirements

Toilets in accessible units should have compliant grab bars





Section 504 Requirements

Showers and tubs should have grab bars, hand-held sprayers, seats, and lever type faucets



Section 504 Requirements

Showers and tubs should also have seat



Section 504 Requirements

Closets should be accessible and closet rods should be within proper reach ranges



Section 504 Requirements Reasonable Modifications

Some units can not be made accessible due to structural issues



WINDSOR COMPLIANCE

Questions?

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