

## Chapter 2

### Instructions for Completing Form 8823

#### Overview

State agencies use Form 8823 to notify the IRS of noncompliance with the requirements of IRC §42 or fulfill other reporting requirements. This chapter includes instructions for completing Form 8823.

#### After Building is Approved

Form 8823 should be used to report noncompliance *after* Form 8609, Low Income Housing Credit Allocation Certification, has been signed by the state agency and issued to the owner.

#### Before Building is Approved

There may be instances where noncompliance is identified *before* the issuance of Form 8609. \*If, at the time the Forms 8823 is submitted to the IRS, the owner has not received completed/signed Forms 8609 from the state agency, the\* Forms 8823 should be completed, but sent directly to the IRS Headquarter analyst responsible for the Low-Income Housing Credit program, rather than filing the form with the Philadelphia Service Center. \*Line 5, Total credit allocated to this BIN, should be zero.\* The IRS will consider these Forms 8823 timely filed.

#### Correction Period

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.<sup>1</sup> Under Treas. Reg. §1.42-5(e)(2), state agencies must provide *prompt* written notice to the owner.

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.

Form 8823 must be filed with the IRS within 45 days following the end of the correction period, whether or not the noncompliance has been corrected.

#### Example 1: Annual Certification Under Treas. Reg. §1.42-5(c)(1)

An owner failed to submit the annual certification that the building was in compliance with IRC §42 requirements; e.g., that annual income certifications had been received from each low-income tenant and that the units were rent-restricted, etc. The certification was due March 1, 2005 and the state agency notified the owner in writing on April 1, 2005 that the certification had not been received.

The correction period began on April 1<sup>st</sup> and ended on June 29<sup>th</sup>. The owner had 90 days, until June 29, 2005, to provide the annual certification. The Form 8823, noting noncompliance with category 11d, Owner failed to provide annual certification or provided incomplete or inaccurate

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<sup>1</sup> See Treas. Reg. §§1.42-5(e)(4) and 1.42-5(a)(2).

certifications, must be filed after June 29<sup>th</sup>, but no later than August 15, 2005.

#### Example 2: Extending the Correction Period

A state agency completed a physical inspection and identified noncompliance that required longer than 90 days to correct. The owner received notice of the noncompliance and the correction period began on January 15, 2004.

The state agency may extend the correction until July 15, 2004, giving the owner a total of 6 months to correct the problem. The Form 8823 must be filed with the IRS after July 15, 2004, but no later than August 25, 2004.

### General Guidelines for Completing Form 8823

1. Select all applicable categories of noncompliance.

Example 1: The state agency determined that 1 out of 10 low-income units in a building had been rented to a household with incomes that did not meet the income eligibility restrictions. Category 11a, Household income above income limit upon initial occupancy, should be selected.

Example 2: The state agency determined that 7 out of 10 low-income units in a one-building project were rented to households with incomes that did not meet the income eligibility restrictions. As a result, the owner did not meet the 40/60 minimum set-aside for that year. Category 11a, Household income above income limit upon initial occupancy, should be selected, and category 11f, Project failed to meet minimum set-aside requirement, should be selected.

2. A separate Form 8823 must be filed for each BIN. The form must be prepared using the fillable PDF file as revised October 2005 (or later) with the bar codes.
3. When filing a “back in compliance” Form 8823, all the instances of noncompliance for a specific category must be remedied before the building is considered “back in compliance” for that category. For example, if four units are cited for violations of the UPCS inspection standards, all four units must be repaired before the building is considered back in compliance for that issue.
4. All categories of noncompliance must be resolved before filing a “back in compliance” Form 8823. Be sure to mark the “noncompliance corrected” boxes for each of the resolved issues. If more than one “noncompliance corrected” box is marked, enter the date of the most recent correction on line 9 of Form 8823.
5. An amended Form 8823 is identified by checking the box at the top of the form under the title. An amended Form 8823 should be filed with the IRS only if it is necessary to correct an error on a Form 8823 that was previously filed with the Service. For example, the wrong category is selected or an address is incorrect. A copy of the amended Form 8823 should be sent to the owner concurrent with filing the form with the IRS.

6. Descriptions of noncompliance or additional information \*are not required, but if\* submitted with the Form 8823, \*descriptions\* should be concise; however, avoid the use of canned or repetitive statements. It is helpful to identify the unit number, the date out of compliance and the date corrected, and summarize the problems with a brief description. Copies of reports and notification letters sent to the owner describing the noncompliance, electronic pictures, and newspaper articles are also helpful.

Concisely describe the content of any additional information maintained by the state agency; e.g., physical inspection reports, photographs, written statements from tenants, etc. Do *not* send photocopies of pictures; they are not useful.

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.

7. State agencies should report all noncompliance of which they are 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. See chapter 3 for additional discussion.

Independently, state agencies must also report any change in the applicable fraction (such as converting LIHC units to market rate units) or eligible basis (such as converting common area to commercial space) that results in a decrease in the qualified basis as noncompliance.

8. There is no “noncompliance corrected” block available for category 11p, Project is no longer in compliance nor participating in the program. Should the state agency decide to reinstate the property, the state agency should contact the IRS Low-Income Housing Credit program analyst.

## Line-By-Line Instructions

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| <b>Line 1</b> | Building Information: Ensure that the complete building (or project) name and address, including ZIP code is identified.  |
| <b>Line 2</b> | BIN: Ensure that building identification number is correct. It should consist of the two letter state abbreviation, two-digit year and five-digit number assigned.  |
| <b>Line 3</b> | Owner Information: Remember to check the box if the current owner's name is different than the owner shown on Form 8609. Ensure that the current owner's EIN/SSN is correct. If there is more than one owner, attach a schedule listing the name, address, and EIN/SSN of each owner. |
| <b>Line 4</b> | EIN: Ensure that the identification number for the owner is correct and check the box SSN for individual taxpayers (xxx-xx-xxxx) or EIN for business entities (xx-xxxxxxx) such as corporations and partnerships.   |
| <b>Line 5</b> | Total credit allocated to this BIN: Provide the total allowable LIHC allocated to this BIN. This is computed by adding the amounts of credit allocated to the BIN on all  |

Forms 8609, line 1b. Do not include Forms 8609 for which the compliance period has expired.

- Line 6** Number of buildings in the project: Enter the number of buildings that house residential living units and have BIN numbers assigned to the project. Do not include recreational facilities or other amenities.
- Line 7**
- a. Number of residential units in the building: Enter the total number of both LIHC units and all other residential units. But do not include managers' units. See footnote for special rules regarding buildings placed in service prior to September 9, 1992.<sup>2</sup>
  - b. Number of low-income units in the building.
  - c. Number of residential units with noncompliance problems: Count each unit for which noncompliance is being identified *in this report*; do not include previously reported, but still outstanding, noncompliance. Count each unit only once, even if there are multiple compliance problems.
  - d. Indicate the total number of units reviewed in this building for which the Form 8823 is being filed. Count each unit being reviewed once, even if you reviewed the same unit for both the annual certification and simultaneously performed an on-site review.
- Line 8** Date building ceased to comply: Enter the date that the building ceased to comply with the IRC §42 low-income housing credit requirements. If there are multiple noncompliance issues, enter the date of the earliest discovered issue. Do not complete this item to indicate the date a building (or an interest therein) was disposed of.
- Line 9** Date noncompliance corrected: If entering a corrected date, make sure the appropriate "noncompliance corrected" block in lines 11a through 11o, or 11q is checked. If there are multiple categories, the date the last issue was resolved should be entered. (Note: there is no "noncompliance corrected" block for category 11p, Project is no longer in compliance nor participating in the program.)
- Line 10** Correction of previously reported noncompliance: Check this box if the sole reason for filing the form is to indicate that previously reported noncompliance problems have been corrected.
- Line 11a-p** Noncompliance categories: Select the category that best describes the issue being reported. Be sure to check the correct box for "out of compliance" and/or "noncompliance corrected," as applicable.
- Line 11q** This category is used only for those issues that do not fit into the categories specified in 11a through 11p. Be sure to attach an explanation.

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<sup>2</sup> Note that, in some instances involving buildings placed in service, receiving an allocation of credit, or described in IRC §42(h)(4) with respect to which tax-exempt bonds were issued prior to September 9, 1992, managers' units may be included in the total number of residential units. See Rev. Rul. 92-61, 1992, 32 I.R.B. 4. The IRS will not, however, apply Rev. Rul. 92-61 unless the owner files, or has filed, a return that is consistent with the ruling.

- Line 12** Additional Information: Extensive detail is not necessary, but a summary is desirable to indicate the nature and extent of the noncompliance.
- Line 13**
- a. Building disposition: Check the box for the appropriate type of disposition (sale, foreclosure, destruction, or other). For “other” dispositions, attach an explanatory statement.
  - b. New owner’s name and address: Ensure that the owner’s name, address and ZIP code are correct.
  - c. Date of disposition: The date the ownership actually transferred should be used. If the exact date is unknown, enter the best approximation.
  - d. New owner’s EIN: Ensure that the identification number for the owner is correct and check the SSN for individual taxpayers (xxx-xx-xxxx) or EIN for business entities (xx-xxxxxxx) such as corporations and partnerships.
- Line 14** Contact Person: Identify the person the IRS should call if there are any questions and include that person’s telephone number.
- Signature** Signature of authorizing official: The authorizing official is a state agency official who is authorized by the state agency to sign such documents. The person need not be an executive, but may be a lower level employee within the state agency organization.