Overview of the IRS 8823 Guide

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Overview

- The scope of the guide is limited to "guidelines" for preparing Form 8823 for submission to the IRS by the State Allocating Agencies
- Owners and management agents of low income tax credit properties are encouraged to get familiar with the 8823 Guide, to obtain a better understanding of how the allocating agency will approach issues of noncompliance and report them on Form 8823
Chapter 1 - Introduction

- Purpose of guide: to provide standardized operational definitions for noncompliance categories listed on Form 8823
- The role of the State Agency – to monitor and report to IRS
- Once the Agency reports, the issue is between the owner and the IRS

Chapter 2 - Instructions for Completing Form 8823

- State Agencies monitor and report noncompliance for projects that have been issued Form 8609
- And can also issue an 8823 for projects that have not yet been issued Form 8609
- Let’s review a sample Form 8823
Chapter 3 – Guidelines for Determining Noncompliance

- Agency conducts a Monitoring visit
- A snapshot in time is indicative of entire project
- Using professional judgment to determine reportable noncompliance

- Evaluate the evidence
- File Form 8823
- Agency will not report any noncompliance corrected by owner prior to notification of audit
Chapter 4 – Household Income Above Income Limit Upon Initial Occupancy

- Category 11-A on Form 8823
- Changes in family size - Totem Pole Rule
- Earnings in excess of $480

Chapter 4 – Household Income Above Income Limit Upon Initial Occupancy

- Income certification – 120 days
- Transfer Rules – The owner Line 8b election
- Back in compliance

Chapter 5 – Owner Failed to Correctly Complete Annual Income Recertification

- TCAC reviews all recertifications
- Major emphasis given to: move-in, first annual, and most current recertifications
- Mixed use projects – Must check 140% rule at each recert
- Mixed use projects must perform full income and asset recertifications on anniversary move-in date
Chapter 6 – Violations of UPCS

• The Uniform Physical Condition Standards (UPCS)
• Physical inspection of units, buildings and common areas
• Units must be safe, in decent sanitary condition, and in good repair
• Level 2 and 3 violations that threaten life, health or safety will always be reported on 8823 - even if corrected

Chapter 7 – Owner Failed to provide AOC

• Annual Owner Certification is a yearly requirement for all tax credit projects
  — Due date for AOC is 3rd Monday of March
• AOC package has two parts (AOC and POP) and (AOE and Lender Report)
  — AOE and Lender Report due the 3rd Monday in May
• Failure to submit AOC Packet will result in an uncorrected 8823, or negative points or fines

Chapter 8 – Changes in Eligible Basis

• Costs incurred to acquire, rehab or construct a new project
• Violation can occur anytime tenants are charged for use of facilities included in eligible basis
• Charging for use of community rooms, parking garage, w/d hook-ups, etc.
• Always consult with owner tax credit professional (CPA) before implementing additional charges
Chapter 10 – Project Failed to Meet Minimum Set-Aside

- Know what Federal Set-Aside owner elected: 20/50 or 40/60
- Can be a problem if owner elected 20/50 and project is operating as a 40/60
- First year lease-up is crucial to federal minimum set-aside

Chapter 10 – Project Failed to Meet Minimum Set-Aside

- Be careful of vacant units and transferring
- In the event a project failed to meet its federal minimum set-aside during the first year credit period – credits are lost forever

Chapter 11 – Gross Rent(s) Exceed Tax Credit Limits

- Always use the most current rent and income limits applicable to your project: www.treasurer.ca.gov/ctcac/compliance.asp
- Be careful of mandatory fees
  - renters insurance, cable, etc.
- Utility allowance must be current, from correct source and applicable to specific type of utility
  - gas, electricity, a/c
- Section 8 rents and Rural (FmHA) rents can exceed tax credit maximum rents
Chapter 12 – Project Not Available to General Public

• Project must be available to the general public
• If project or certain units are designated only for a particular occupational group
  – could trigger violation of this rule
• Fair Housing Act – unlawful to discriminate on basis of race, color, religion, sex or national origin

Chapter 13 – Notification of Fair Housing Violation

• State Agencies must report the receipt of notices of Fair Housing Act violation by HUD or Department of Justice to the IRS
• On-site management should be well trained in fair housing law
• California has filed 8823’s under this category

Chapter 14 – Violations of the Next Available Unit Rule

• This rule applies mostly to mixed use tax credit properties
• Every annual recertification must be tracked closely for income exceeding 140%
  – should keep a spreadsheet
• Management should have copies of the Form B’s which provide a building by building breakdown of low-income unit mix, market units, square footage
Chapter 15 – Violation of the Vacant Unit Rule

• Failure of owner to make reasonable attempts to rent a vacant unit

• Units kept vacant for over 60 days
  – Owner should keep a detailed spreadsheet of how vacant units are being advertised and re-rented

• Keeping units vacant because of a special program

Chapter 16 – Regulatory Agreement

• Owner fails to enter into a regulatory agreement with State Agency

• In California owner is required to enter into a recorded regulatory agreement prior to issuance of Form(s) 8609

Chapter 17 – Low Income Units Occupied by Nonqualified Full-time Students

• K-12th grade students considered full-time students for purposes of this rule

• Need to be fully aware of the 5 IRS full-time student exceptions

• A unit can violate this rule at anytime during a household tenancy
Chapter 18 – Owner Did Not Properly Calculate Utility Allowance

• If tenants pay utilities - an allowance must be given
• From HUD, PHA, RD, HUD, Utility Company, HUD Model or CUAC
  — please note, in California we do not use the Agency Estimate
• U/A must be most current
  — changes must go into effect within 90 days
• The verification of correct tax credit rent is tied to the U/A

Chapter 19 – Owner has Failed to Respond to Agency Requests for Monitoring Reviews

• TCAC gives ample notification time (30 days)
• 1,300 inspections in 2018
  — poses a challenge to re-schedule
• Violation can also occur for failure to provide pre-inspection reports on time
• CTCAC has filed 8823’s for failure to respond

Chapter 20 – Low-Income Units Used on a Transient Basis

• IRS regulations require initial lease term be at minimum 6 months
• Lease can be month to month for SRO or transitional housing for homeless
• Acquisition/Rehab tax credit projects where tenants are locked into month-to-month leases at initial certification – permitted by TCAC
• Any new move-in thereafter, owner must enter into new lease periods of 6 months or more
Chapter 21 – Project No Longer in Compliance

- Reporting a project in this category triggers recapture
- Project owner returns all or some credit
- Owner fails to comply with program requirements
  - For example – did not place project in service within required time period refused agency reviews

Chapter 21 – Project No Longer in Compliance

- State agency can terminate the regulatory agreement
- 3-year period – tenants cannot be evicted for other than good cause and rents cannot be increased

Chapter 22 - Qualified Nonprofits

- Nonprofit must “materially” participate in an ongoing, continuous and substantial basis with the project
Chapter 23 – Other Noncompliance Issues

• Any other noncompliance issue not reportable in other categories on Form 8823
• For example: Allocating Agency reporting tenant file fraud or owner fraud

Chapter 24 – Building Disposition

• Owners must report to allocating agency when a tax credit project is sold or a sale of an ownership interest in project
• Foreclosure of a property
• Destruction of a property

Chapter 25 – Misc. Topics

• Tenant misrepresentation or fraud
• Owner/taxpayer fraud
• Both reportable to IRS on Form 8823
Chapter 26 – Tenant Good Cause Eviction and Rent Increase Protection

• If a project is foreclosed on and the regulatory agreement is terminated: a three (3) year period will be in place that will protect tenants from eviction other than for good cause and restrict rents to affordable limits

Chapter 26 – Tenant Good Cause Eviction and Rent Increase Protection

• Owner cannot evict or terminate the tenancy of a low-income unit for other than good cause

Questions?