

**8823 Audit Guide**

Exploring the Top 10 Areas of Importance in the Audit Guide

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**8823 Audit Guide**

- Official name:
  - “Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Non Compliance or Building Disposition”
- Issued by the IRS
- Revised in January 2007
- Follows the layout of Form 8823
- 160 pages

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**8823 Audit Guide – Item #1**

- Local Utility Allowance Election is Permanent with One Exception
- 8823 Guide Reference 18-2

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### Local Utility Allowance Election

- The election to use a local utility company allowances is permanent, unless the state agency approves a switch back to the PHA allowance.

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### Local Utility Allowance Election

- For example an owner used utility allowances provided by the local utility company. The owner asked the local utility company for an updated estimate of use by similar units in the local area. The utility company informed the owner that they not longer provide allowances. With the state agency's approval, the owner can use the current PHA allowance.

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### Local Utility Allowance Election

- Input from the Kentucky Housing Corporation (KHC):
  - Must have KHC's approval prior to changing the utility allowance method
  - One year of operation – actual expenses
- KHC highly recommends utilizing local PHA.

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## 8823 Audit Guide – Item #2

- Transfers between Buildings
- 8823 Guide Reference 4-16

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## Transfers between Buildings

- When a tenant, whose income is less than 140% of the income, transfers to a new unit the vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

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## Transfers between Buildings

- This is true whether the tenant is transferring within the same building or to a new building within the same project.
- However, the IRS appears to be excluding tenants over 140% of the income from transferring between buildings within the same project, unless they are treated as a new move-in with an initial income certification.

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### 8823 Audit Guide – Item #3

- Manager's Units
- 8823 Guide Reference 8-3

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### Manager's 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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### Manager's Units

- If the owner is charging rent for the units, the IRS may determine that the unit is not reasonably required by the project because the owner is not requiring the manager to occupy the unit as a condition of employment.

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## Manager's Units

- Procedure to acquire manager's unit:
  - Notify KHC, via the Notification Form.
  - Identify the unit on the Building Status Report.

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## 8823 Audit Guide – Item #4

- Gross Rent(s) Exceed Tax Credit Limits
  - 8823 Guide Reference 11-6 and 11-7
- Rent Computations
  - 8823 Guide Reference 11-1

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## Gross Rent(s) Exceed Tax Credit Limits

- Overcharging Tenants for rent in the first year of the compliance period can disqualify the owner from claiming any credits.

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### Gross Rent(s) Exceed Tax Credit Limits

- The 8823 Audit Guide indicated that an owner can not avoid the disallowance of the Low-Income Housing Credit by rebating excess rent to the affected tenants in any year of the compliance period.

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### Gross Rent(s) Exceed Tax Credit Limits

- **Previously** tenants overcharged rent would not result in a Form 8823 being issues, if the tenants had been reimbursed the overpayment of rent.
- **Currently**, a Form 8823 will be issues and the unit is out of compliance until the rent is lowered.

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### Rent Computation

- Units may be residential rental property notwithstanding the fact that services *other than housing* are provided.
- However, any charges to low-income tenants for services that are not optional generally must be include in gross rent.

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## Rent Computation

- Non-optional fees – include in gross rent:
  - Renter's Insurance
  - Built in storage shed
  - W/D hook ups
- Optional fees – not included in gross rent:
  - Laundry room equipment fees
  - Pet fees

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## 8823 Audit Guide – Item #5

- Verifying Income and Assets
- 8823 Guide Reference 4-4 – Footnote 12 (on Reference page 4-5)
- Child Support
- 8823 Guide Reference 4-12

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## Verifying Income and Assets

- Acceptable methods of verifying information include third party verifications, review of documents submitted by the tenant (such as check stubs), and tenant certifications made under penalties of perjury.

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## Verifying Income and Assets

- Footnote 12:
  - 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 contact 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.
- KHC enforces two week rule.

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## Child Support

- 8823 Audit Guide deems a signed, sworn self-certification by a tenant sufficient documentation of Child Support income.
- ***However***, KHC continues to require full documentation of court ordered child support. KHC's procedure related to verifying Child Support income remains unchanged. Be sure to use KHC's Child Support Form.

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## 8823 Audit Guide – Item #6

- Full-Time Students.
- 8823 Guide Reference 17-1 and 17-2

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### Full-Time Students

- IRC 151(c)(4) defines, in part, a “student” as an individual, who during each of five calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRV 170(b)(1)(A)(ii). Treas. Reg. 1.151-3(b) further provides that the five calendar months need not be consecutive.

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### Full-Time Students

- The term “educational organization” includes:
  - Elementary schools;
  - Junior / Middle schools;
  - Senior High schools;
  - Colleges and Universities;
  - Technical, Trade and Mechanical schools.

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### Full-Time Students

- Revisions to the qualified exceptions:
  - Single parents with children all of who are students and such parents and children are not dependents of another individual (none of the household members are dependents of a third party).
  - A married couple that is entitled to file a joint tax return, but has not file one, still satisfies the exception under IRC 42(i)(3)(D)(ii)(II).

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### 8823 Audit Guide – Item #7

- Recertifications
- 8823 Guide Reference 4-3, 4-14 and 5-1

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### Recertifications

- Changes in Family Size – Reference 4-3
  - The addition of new member(s) to an existing LIHC household requires the income certification for the new member of the household, including third party verification.
  - The new tenant's income is added to the income on the existing household's Tenant Income Certification.
  - The income of the new member is taken into consideration with the income of the existing household for purpose of the Available Unit Rule.

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### Recertifications

- Effective dates:
  - State agencies will accept recertification dates moved to the 1<sup>st</sup> of the month. Reference 4-14
- Certifications:
  - If the certification is more than 120 days old, the tenant must provide a new certification. Reference 4-14

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## Recertifications

- Recertifications:
  - Noncompliance with annual income recertification requirements that is identified and corrected by the owner prior to notification of the compliance review by the state agency need not be reported. Reference 5-1

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## Recertifications

- A retroactive certification can be performed which completely & clearly documents the sources of income & assets that were in place at the time the certification should have been effective, & applies income limits there were in effect on that date.
- The tenant should date the document with the current date of signature with a statement that says the information is true & correct as of the effective date of the certification.
- Assuming the owner can document that the household was income eligible at the time of move-in, the unit should not be considered out of compliance.

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## 8823 Audit Guide – Item #8

- Other Non-compliance Issues
  - Specifically Non-performance of the Extended Use Agreement (EUA)
- 8823 Guide Reference 23-1

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**Non-performance of the Extended Use Agreement (EUA)**

- Under IRC 42(h)(6), taxpayers receiving credit 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 ends 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.
- Existing EUA violations will remain open under the old rule. Corrections must be submitted to KHC in order to close finding.

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**8823 Audit Guide – Item #9**

- Violation(s) of the Uniform Physical Conditions Standards (UPCS) or Local Inspection Standards.
- 8823 Guide Reference 6-1, 6-3, 6-4

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### Physical Inspection Standards

- State agencies must inspect LIHC properties to ensure that LIHC building and units are suitable for occupancy.
- Inspections by the state agency must be made at least once every three years.

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### Physical Inspection Standards

- To ensure consistent evaluation of the property's physical condition, the definitions of physical deficiencies used for the Real Estate Assessment Center System (REAC) by the Department of Housing and Urban Development (HUD) will be used to determine whether non-compliance has occurred.

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### Physical Inspection Standards

- Exhibit 6-1 – Checklist for the Physical Inspection of LIHC Properties & Summary of Findings.
  - New forms being used by many state agencies during the property inspection.

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## Physical Inspection Standards

- Exhibit 6-4 – Notification Letter – Critical Violations.
  - Violations involving life-threatening problems, requiring correction within 72 hours of notification.

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## 8823 Audit Guide – Item #10

- Guidelines for Determining Noncompliance
- 8823 Guide Reference 3-1 and 21-3

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## 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 LIHC tenant files and units must be reviewed by the state agency.

Reference 3-1

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### Guidelines for Determining Noncompliance

- Failure to respond to repeated requests for reports, certifications, review or other essential communication.
- Continual postponements of inspections of LIHC property.
- Failure to provide requested documentation prior to site visit.

Reference 21-3

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### 8823 Audit Guide

- The 8823 Audit Guide is a good tool for determining what state agencies will looking for when they review properties for compliance.
- However it is extremely important to note that KHC may have more restrictive requirements.
- Please contact your state agency before relying on the 8823 Audit Guide.

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### Closing Tips

- Leave a paper trail, documentation is an important aspect of working with LIHC properties.
- Communicate with your state agency. Working together is beneficial for all parties involved from the on site staff, to the owner and the state agency!

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