

2007 8823 Guide Changes

SLIDE 2: MONITORING IMPACTS:

ALLOWS FOR INSPECTIONS PRIOR TO ISSUANCE OF THE 8609'S

- The guide now allows inspections prior to the issuance of the 8609s and if 8823's are completed as a result of the inspection, they are sent directly to Grace Robertson of the IRS. The Compliance Officers monitoring your tax credit properties are now making every attempt to visit your property BEFORE the completion of your lease-up. Although we consider this a "courtesy visit" so we can assist with answers or guidance, some managing agents, owners and syndicators find this procedure intrusive, irritating, and intimidating and view it as a negative thing. However, we put this procedure in place simply as a tool to offer assistance. We honestly just trying to assist you prior to the issuance of the 8609's so we can help curtail any possible infractions that would cause an 8823 to be issued to the IRS. This is especially crucial for first time owners and managing agents. I rust me when I say... the Compliance Officers do NOT want to have to complete 8823's almost as much as owners do not want them issued.

SHORTENS THE TIME FRAME FOR THE FIRST INSPECTION

- The new guide now defines the timeframe for first inspection as within 180 days after the end of the taxable year in which credits are first taken.

Example: If the placed in service date is November 30, 2005 but the owner didn't take any credits until 2006, then the CO would have until June 30th of 2007 to inspect the project. If the project was placed in service on September 15, 2005 and the owner ended up taking credits in 2005, the CO would have until June 30, 2006 to inspect the project so the timeline has just been moved up one entire year for the CO but the placed in service date was only different by 2 and a half months.

CHANGES HOW VACANT UNITS ARE COUNTED FOR INSPECTION

- Now says we can use the vacant units as a part of the 20% physical and now we will audit the file of the last tenant that occupied the unit.

NOTE: This is not a big deal for us but it will be a big deal for owners and managing agents if there are findings in those files. Owners will be required to fix the file or accept the out-of-compliance status for a period of time.

ALL LEVELS OF DEFICIENCIES UNDER UPCS ARE REPORTABLE

- All physical deficiencies reported and levels 1, 2, and 3 and health and safety items identified on an attachment to the 8823.

NOTIFICATION OF EXIGENT AND NON-LIFE THREATENING HEALTH & SAFETY ISSUES

- Because the health and safety issues are so important, the IRS have asked the states to immediately notify the owner/managing agent of those types of findings and the owner **MUST** address those findings immediately. We accomplish this through an Immediate Action form that we leave at the site that must be faxed back to your compliance officer within 72 hours noting when the repairs were completed.

It is also important for you to know, that if the CO's note something in a report and they find the same violation the next time they go to the project, the 8823 issued as a result will report the noncompliance period back to the date of the previous inspection, which may have significant ramifications for the owner.

ALLOWS FOR MORE ASSET MANAGEMENT FROM THE STATE

- The guide now allows the states to comment on management issues and allows us to use our reports as an asset management tool. Basically what this allows us to do is to report deferred capital issues that are not being addressed in a timely manner.

SLIDE 3: MONITORING IMPACTS:

TIC EFFECTIVE DATES VS. SIGNATURE DATES

- Owners and managing agents can collect signatures 10 days ahead of the effective date for a move-in and 120 days before the effective date of an annual recertification. The IRS pretty much says 120 days period.

NOTE: Oregon feels 120 days out on a move-in is too long and there is far too much potential for things to change and even with the language at the signature line, it isn't conservative enough. The recertification is not as worrisome as the household would already be qualified and the only potential consideration is the 140% rule. So – 10 days for a move-in, 120 days for an annual recertification.

TRANSFERS FROM BUILDING TO BUILDING

- The guide now allows owners to transfer households from one building to another **IF** the household income does not exceed 140% of area median income. However, Oregon has not adopted this stance. Oregon will allow transfers from building to building with no regard to income **AFTER** the household completes the first six months of their

lease term AND the tenant(s) request for reasonable accommodation requires a move. This would be considered a "transfer".

CERTIFICATIONS NEEDED FOR AC/REHAB DEALS

- For acquisition/Rehab deals the guide says – if you have tenants in place when a building is acquired, you must get them certified within 120 days of the acquisition and use the income limits that were in effect on the day of acquisition. The effective date on the cert would be the date of acquisition and no move-in date would be listed and rents must be restricted. If it takes more than 120 days to get a household certified, then they are treated as a new move-in.

NOTE: The IRS did this so owners and managing agents wouldn't be scrambling to figure out how to certify households before the financing closed.

- For Rehab: The applicable fraction for the rehab will always be the same as the applicable fraction for the acquisition.

NOTE: A unit occupied by a nonqualified household does not count – it must be removed from the numerator. A unit that was vacant and was last occupied by an ineligible household must be removed from the numerator. And a unit that is not suitable for occupancy does not count toward the applicable fraction. Barring any of those scenarios, all others count.

NON-COMPLIANCE FOUND PRIOR TO THE NOTIFICATION OF A STATE INSPECTION

- If the owner finds a noncompliance issue and corrects it prior to notification by the state that we intend to conduct an inspection, the finding is not reportable. If the state notifies the owner of the intent to inspect the project and they go through the files and find some issues and correct them after the notification but before we actually come out to the project, then it is reportable.

IMPERFECT DOCUMENTATION

- The IRS says that imperfect documentation is ok as long as it is good enough to determine initial eligibility.

NOTE: What is imperfect versus unacceptable? Unacceptable would be forms or methods that aren't acceptable or key pieces of information that are missing. Imperfect means the information is there but may have minor problems.

Example: An employment verification that has a minor difference between the wage amount and the year-to-date annualization and which does not affect eligibility. Keep in mind that

SLIDE 4: RECENT COMPLIANCE UPDATES & REQUIREMENTS:

CLARIFICATIONS

- Student Rule Revision – Effective 12/20/07
Under H.R. 3648 the President signed into law a clarification regarding the student rule and single parents with children who apply to reside in Tax Credit properties. With the signing of this law, effective immediately (for past, present, and future LIHTC allocations), a household comprised of a single parent and his/her children can be full-time students and still qualify for housing in Tax Credit units if:
 - a. the single parent is not being claimed on the tax return of a third party, and
 - b. the children are not being claimed as dependents on the tax return of a third party (*other than a parent*). The children can only be listed on the tax return as dependents of the parent they live with (in the unit) **or the absent parent** (outside of the unit).

ON-SITE ADMINISTRATIVE NOTEBOOKS

- Effective January 1, 2007 owners/agents were required to keep an Administrative Notebook on site. This notebook must contain documents necessary for the site staff to understand the requirements of the project and how to stay in compliance. Documents OHCS would expect to see would include (but not limited to) the LIHTC Declaration of Land Use and Restrictive Covenants, current utility allowance documentation that identifies the source of the information, current rent and income limits, a copy of the resident services plan, and copies of the 8609 forms for each building.

7 REQUIRED FORMS

- OHCS has mandated the use of the following seven forms. The forms cannot be altered in any way except to include company logos. Should you feel the need to incorporate additional information, please do so by adding the information on a separate sheet of paper (or to the backsides).
- Owner's Certificate of Continuing Compliance (F.1)
- Tenant Income Certification (F.2)
- Employment Verification (F.3)
- Verification of Student Status/Educational Assistance (F.4)
- Unemployment Affidavit (F.5)
- Under \$5,000 Asset Certification (F.6)
- Applicant/Tenant Questionnaire (F.7) - n

SLIDE 5: AND MORE CHANGES AND UPDATES...

CHANGES TO THE TIC

- The changes made include the addition of check boxes at the top of page one to address post-15 year certifications. Instructions on how to properly complete these sections are also included.

CHANGES TO THE ANNUAL CERTIFICATION OF COMPLIANCE (CCPC)

- The CCPC was recently revised to expand on question number five. It now includes a section where the owner must disclose whether or not there is a designated manager's unit at the project. It further asks if the on-site manager qualifies the unit under the Section 42 Program requirements and if rent is being collected for the unit.

THE NEW OHCS MANUAL

- On November 1, 2007 the Fifth Edition was posted to our website at www.ohcs.oregon.gov.

SLIDE 6: POST-15 YEAR MONITORING

WHAT DOES "POST 15-YEAR" MEAN?

- Post-15 year refers to the extended use period – or in other words – the period of time after all the tax credits have been taken and the project is no longer in its "Compliance Period" as defined by the IRS.

REQUIREMENTS OF THE PLAN

- The owner is still responsible to maintain the applicable fraction as agreed.
- Rents and income limit restrictions must be maintained.
- Units must remain available to the general public.
- The owner must continue to abide by the Fair Housing Act.
- The owner may not deny housing to a Section 8 voucher holder solely based on the prospective tenant's status as a voucher holder.
- Units must be maintained as suitable for occupancy.
- Households must be certified initially and at the anniversary of the move-in.
- Utility allowances must still be updated annually and implemented within 90 days of their published effective date.
- Owners still have to comply with other representations made during the application process and the requirements of their specific allocations year's QAP.

YOU RELAX...

- Some of the items we have relaxed:
 - The initial certification is still required. Income at move-in must be verified through third-party sources.
 - The first annual certification will also be required and third-party documentation required – just as it is in the first 15 year period. However, if the household remains in place to go through another recertification, you may then use a self-certification of income from the adult members of the household to determine the income to list on the TIC.
 - Any changes in household composition in the first six months of occupancy will require treatment as a new move-in.
 - Student status restrictions will no longer apply.
 - Unit transfers anywhere within the project are allowable without regard to the household's income at the point of transfer.
 - Projects will not be subject to the next available unit rule.

WE RELAX...

- There will be relaxed monitoring on our part as well –
 - We will continue to inspect your project but less frequently and we'll look at fewer files and units while we are there (5-10% typically but, at the discretion of the Compliance Officer we may choose to audit more than 10% of either the files or the units or both).
 - Monitoring charges during the extended use period will be reduced to \$25 per unit per year, from \$35 per unit per year.
 - Owners can request a waiver of inspections and monitoring charges if your project has a project-based subsidy in place. Owners must do so in writing. We haven't ironed out the details. This is still up for discussion.