

August 29, 2011

Internal Revenue Service  
Attn: Yvette B. Lawrence  
1111 Constitution Avenue, NW., Room 6129  
Washington, DC 20224

Dear Ms. Lawrence:

Thank you for the opportunity to offer comments to the Form 8823, Low-Income Housing Credit (“LIHC”) Agencies Report of Noncompliance or Building Disposition. Below are comments on specific line items and suggested items to be added to the Form 8823, Revised June 2011.

**Comments on Specific Line Items in Form 8823**

1. Line 5 should state, “Total *annual* credit allocated to this BIN” to make it clear the annual credits apply.
2. Line 6 should state, “If this building is part of a multiple building project, *as elected in Question 8b of the Form 8609*, enter the number of buildings in the project” to make it clear that the answer matches Question 8b of Form 8609.
3. Line 7c should state “*low-income*” units instead of “residential units” because noncompliance issues are regarding only low-income units.
4. Line 7d should state “*total number of low-income units*” instead of just total units because noncompliance issues are regarding only low-income units.
5. Line 8 and 9 could be improved if the Form 8823 indicated if the unit was out of compliance at the close of the year since this is the key date for determining if there will be recapture. For example, the IRS Form 8823 has a non-compliance start (line 8) and end date (line 9), but this is the date the first non-compliance issue started and the date the last non-compliance issue was cleared. This does not provide enough information when tracking multiple noncompliance issues. The form should have a noncompliance start and end date for each non-compliance item indicated.

6. Line 9 asks for the “Date noncompliance corrected.” Please clarify whether this is the date that the agency received the documentation of correction and signed off on it or the date that the item was actually fixed. For example, if there is a UPCS violation where the owner hired a contractor to correct the issue and the contractor provided a letter and time stamped pictures showing the item was corrected on November 15th, but the state agency did not review the documentation and signed off on that correction until February 15th, which date should be listed?
7. Line 10 should state “Check this box if you are filing only to show correction of a previously reported noncompliance problem *corrected within three years after the end of the correction period.*” Line 10 appears that it should only be used for corrections made within three years after the end of the correction period. Either the Form 8823 or the instruction should indicate the time period - within three years after the end of the correction period.
8. Line 11m should state, “Owner did not properly calculate utility allowance, *which resulted in gross rent(s) exceeding tax credit limits.*” This approach agrees with the IRS LIHC Newsletter Issue #45 as follows:

The reporting of noncompliance with the Utility Allowance requirements is now expressly limited to those instances where the noncompliance causes the rent paid by the tenant to exceed the gross rent limit. It is a two-pronged test:

1. Did the taxpayer make an error when computing the utility allowance?
2. Did the error cause the rent paid by the tenant to exceed the gross rent limit for one or more months?

Only when the answer to both questions is “yes,” would a state agency report noncompliance with the utility allowance requirements on Form 8823, line 11m.

9. Line 11d should state, “Owner failed to provide annual certifications or provided incomplete or inaccurate certifications *to the state agency.*” Line 11b and 11d are worded very similar, but line 11b is for the annual recertification that the owner completes with the tenants, while line 11d is for the annual certification that owner submits to the state agency.
10. In the Specific Instructions for Form 8823, under “Items 3, 4, 13b, and 13d”, 13b should be replaced with 13c since this line contains information for the new owner. Line 13b is for the date of disposition and not about owners.

**Items Suggested to be Added to Form 8823**

1. Add a line item for a violation regarding transfers to a different building when the household's most recent income is over 140% of the applicable income limit.
2. Add a line asking if the project is a mixed income or 100% LIHC project.
3. Include the current owner's contact and phone number. Question 13 asks for the new owner's contact and phone number. However, if there is no sale/foreclosure/destruction, then the IRS would have no contact. With partnership transfers and GP buy outs, the contact person for the owner may change.
4. The Form 8609 appears to have name, address, and EIN of housing credit agency. Maybe Form 8823 should also have a section for the name, address, and EIN of housing credit agency.

If you have any questions regarding the above comments, please contact me at (415) 356-8016. Again, thank you for considering our comments.

Very truly yours,  
NOVOGRADAC & COMPANY LLP

by  
James R. Kroger, CPA