

Managing LIHTC Compliance

Presented by:



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Compliance Basics



**Virginia
Council For
Affordable &
Rural
Housing**

The Goal of this Training

The purpose of this course is to provide information for all interested personnel to successfully provide housing under the Section 42 Low Income Housing Tax Credit (LIHTC) program.

Where We Get Direction

A key to references used in this manual

Format used in the references:

1. Legal Authority

- Section 42, Internal Revenue Code (IRC).**
Additional *Formal* IRS Guidance:
- Treasury Regulations**
- Revenue Rulings**
- Revenue Procedures**
- IRS Notices**

§ 42

Reg 1.42 (-1 to -17)

Rev Rul (yr - #)

Rev Proc (yr - #)

IRS Notice (yr-#)

2. Additional interpretive resources:

- 8823 Guide (rev 2011)**
Now available online at www.irs.gov
- IRS Newsletters**
(provide further guidance)
- Private Letter Rulings**
(cannot be cited as precedent)
- HUD 4350.3**

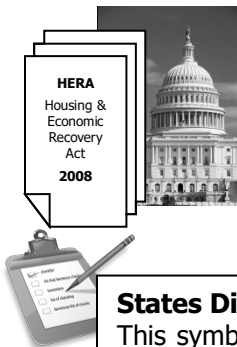
8823 Guide (chapter-page #)

IRS Newsletter (#)

PLR (#)

4350.3 (paragraph/page#)

Other Symbols Used in this Manual



On July 30th, 2008, the president signed into law **H.R. 3221, The Housing and Economic Recovery Act (called by HUD "HERA")**. This bill contained substantial revisions to the LIHTC program. Most of these changes apply going forward, so the former rules will apply to currently existing properties. We will indicate these changes [as well as the related effective dates] with italicized paragraphs and the icon to the left of this paragraph.

States Differ...

This symbol indicates areas where state interpretations of Section 42 tend to differ or where states commonly impose stricter policies. A compilation of these areas with full explanations of issues involved and common state policies can be found in the **"Supplemental Research Tool- What Does Your State Say?"** section at the end of this tab.



Key IRS tax forms are discussed near this symbol

Introduction

What are Tax Credits?

The LIHTC program started with the Tax Credit Reform Act of 1986. Owners receive a reduction in tax liability in exchange for providing affordable housing. This is not a “deduction” – a “credit” is much better. Tax credits are NOT a federal subsidy program like HUD or Rural Development.

Tax Credits can be involved in:

- New construction of a property
- Rehab of a property and
- Acquisition of an existing property (**only if it is also rehabbed**)

Overview: Topics

- 1. Who are the interested parties in a LIHTC property (“The Players”)?**
- 2. What property-specific LIHTC details do managers need to know?**
- 3. Leasing Requirements & Qualifying Households**
- 4. Inspections & Other special LIHTC rules?**
- 5. How does the LIHTC act when combined with other federal programs?**



To retain the credits, a development must:

1.
2.
3.

“The Players”

There are 4 major players in the LIHTC deal. Each will have its own reporting requirements.

1. General Partner (managing member in an LLC)

The GP is often a developer. They assume all liability for compliance at a property. Because of this, they may also own the company that manages the property.



2. Limited Partners (non-managing member for LLC)/ Syndicators

The LP gives the GP money to build the property. The LPs actually OWN a majority of the property. Syndicators facilitate the GP/LP relationship.

3. Non-Profit Organizations

A “qualified nonprofit organization” is defined as an IRC § 501(c)(3) or 501(c)(4) organization exempt from tax under IRC §501(a) that one of the purposes of the organization includes the fostering of low-income housing. must have a minimum of 1% ownership interest in the low-income housing project (directly or through a partnership) and must materially participate (on a regular, continuous and substantial basis) in the development and operation of the project throughout the 15-year compliance period.

§ 42(h)(3)(C)(ii) and Rev Proc 2005-70

3. The IRS (with some borrowing from HUD rules)

The IRS oversees the credit program, with the assistance of the...

4. State Housing Finance Agencies (HFA’s) are used by the IRS to fulfill the following functions:

IRS Reg 1.42-17 & -5

A. The Allocation of the Credits

- Each year, each state is given a certain amount of credits to distribute, or allocate, to developers. This amount is awarded per capita and may be adjusted for inflation each year.
- For calendar year 2018, the amount used under § 42(h)(3)(C)(ii) to calculate the State housing credit ceiling for the low-income housing credit is the greater of (1) \$2.40 multiplied by the state population, or (2) a state minimum of \$2,765,000.
- A minimum of 10% of a state’s allocated tax credits must be awarded to non-profit organizations.
- The **Qualified Allocation Plan (QAP)** is the “Game Plan” that states use to decide who gets credits each year using a scoring system. Besides requiring compliance with Section 42 program requirements, the state may add its own *requirements* that the owner agrees to follow by virtue of applying for tax credits. Owners may also *elect* to take on additional requirements in order to get extra “points” and a higher score.

B. The HFA also monitors for compliance with IRS and state requirements

- The state may use the assistance of a contractor for most duties that it performs.
- States may be more restrictive than the IRS in their requirements, but the IRS is primarily concerned with compliance with IRS issues.
- The IRS requires that the owners complete and submit an “Owner’s Cert” to the state agency annually. This takes the form of a checklist of compliance criteria which the owner attests have all been met.




States Differ...on reporting requirements

Some Key Compliance Documents

- Compliance staff will need these to determine the property requirements.
- Qualified Allocation Plan from the year credits were allocated.
 - Completed 8609 's
 - Final LIHTC Application that was approved by the HFA.
 - The "*Land Use Restriction Agreement*".
This is a land deed that commits the land to the LIHTC. The term "LURA" is used nationally, but may have different names in different states.

Details You Need To Know About Your LIHTC Property

Overview: Property Details



1. Minimum set-aside
2. Income limits
3. Maximum allowable gross rent & utility allowance
4. Applicable Fraction
5. Other state set-asides

Details:

1. Minimum Set Aside

8823 Guide Chapter 10

Every LIHTC property has a minimum set-aside. There are 3 options:

- 1. 20-50**
- 2. 40-60**
- 3. 25-60** – Applies to New York City only.

The minimum set-aside establishes two things:

- 1.** What % units (**minimum**) must be LIHTC AT ALL TIMES (20% or 40%). This is always figured on the number of units, regardless of the size of each unit. The test for this is on the last day of each year.
- 2.** The definition of "low income" at the property (50% or 60% MTSP). All units that will be counted as LIHTC in the property must be at or below this limit.

The minimum set-aside is irrevocably selected on IRS Form 8609 line 10(c).

UPDATE: March 23, 2018: New Income Averaging Option for LIHTC

Details:

2. Income Limits

The "Multi-family Tax Subsidy Program" ("MTSP") LIHTC/bond limits for each county can be found at www.huduser.org/datasets/mtsp.html. The LIHTC/bond "MTSP" income limits used at a project never go down from one year to the next once a specific property is placed in service. Your minimum set-aside will determine the maximum limit for your property (50% or 60% of the area median income for the county the property is in). Your state may impose more restrictive limits on some or all of your units ("state set-asides", see below).

New limits must be implemented within 45 days of release.

Rural and "HERA Special" Income Limits

Some counties have special limits available to them. These are counties that either:

1. Had their income limits frozen under past HUD "hold harmless" policies or
2. Are in rural areas that have income limits that are less than the National Non-Metropolitan limit (note: the rural limits are only available to 9% (non-bond-funded) projects).



You may use this income limit:	If this applies:
Last Year's MTSP Limits	<ol style="list-style-type: none"> 1. The published income limits for the project's county went down for the current year. 2. The project was in service prior to the release of the new limits.
HERA Special	<ol style="list-style-type: none"> 1. HUD lists this option for the property's county. 2. The project was placed in service in 2008 or earlier.
National Non-metro	<ol style="list-style-type: none"> 1. The project isn't funded with tax-exempt bonds. 2. The project is in an area determined by USDA (Rural Development) to be "rural".

Details:

3. Maximum Allowable Gross Rent

Rent Limits

8823 Guide Chapter 11

The gross rents allowed are calculated based on the MTSP income limits. Before 1990, the rent limits were based on family size. They were 30% of the income limit for that family size. After 1990, rent limits were based on **bedroom size**. The LIHTC rent limits are calculated using the **1.5 persons per bedroom** methodology, to determine the family size per income limit. The rent limits are then 30% of the income limit figured as if there are 1.5 "people" per bedroom and then divided by 12; dividing by 12 provides a monthly rent limit. When converting annual rent limits to the monthly rent limits, "cents" are **rounded down**, not up.

Resident rent + utility allowance + any non-optional charges = gross rent

This must be at or below the maximum allowable gross rent (or "gross rent limit")

These are LIMITS only and actual rents charged can be less.

8823 Guide 11-1, 2 & 10

The 8823 Guide makes it clear that the rent limits are to be applied each month, not just in an annual total. Overcharging rent one month makes the unit non-compliant the rest of the year.

Gross Rent Floor

Rev. Proc. 94-57

The gross rent "floor" limits decreases in max rents to the max rent amount on date of the owner's choice of: 1. credit allocation or 2. placed in service date.

Utility Allowances

IRS Reg 1.42-10 (revised 7-29-2008) 8823 Guide Chapter 18

The Utility Allowance (UA) is an estimate for anything a resident MUST pay to non-building owners to live in the unit. The UA is added to the rent and compared to the maximum rent limits.

8823 Guide 18-2 IRS Notice 2009-44

Sub-metering of units is acceptable. Sub-metered utilities may be included in the utility allowance for a project. Ratio utility billing system ("RUBS") are NOT considered sub-metered and cannot be included in the UA.

UA Updates

Treas. Reg. 1.42-10(c)(2)

Allowances must be updated at least annually. PHA allowances must be used within 90 days of the announced change. For projects in lease-up, owners may wait until the project has been 90% occupied for 90 days or the end of the first year of the credit period, whichever is first.



States Differ... on utility allowance estimates

Details

4. Applicable Fraction

...or "the percentage of the units are LIHTC"

§ 42 (c)(1)(B)-(D)

The *applicable fraction* is the fraction of the **residential units** that house tax credit households calculated as the **LOWER** of:

The number of residential rental units **OR** the square footage of the residential rental units.

The fraction is figured as follows:

$$\frac{\text{The total LIHTC portion of the building}}{\text{The total residential rental portion of the building}}$$

Notes:

- Common (non-residential) area is excluded from this calculation.
- Except for the 1st and 11th year credits are claimed, the applicable fraction is based on the units in compliance as of the **last day of the year**.

Employee Units

IRS Rev. Rul. 92-61 and 04-82 IRS Newsletter #14

Full time employees to the property (as defined by the needs of the property) who otherwise do not qualify may occupy LIHTC units. The unit IS included in the eligible basis, but it is EXCLUDED from both parts of the applicable fraction. It is sometimes referred to as being treated as **common area**.

Model Units

Model units are generally utilized during a project’s lease-up period to show prospective tenants the amenities of the project’s units. A model unit can be included in the eligible basis and included in the denominator of the building’s applicable fraction, it cannot, however be included in the numerator of the applicable fraction unless rented to a low-income household.

Details:

5. Other Set Asides

Managers must know details about the percentage of units allocated tax credits, including:

- The applicable fraction. This is the percentage of the units that are tax credit units – See *How Credits are Calculated* section of this manual for further discussion on applicable fraction.
- Any additional state set-asides.
- If the LIHTC and state set-aside units are specific units (“fixed”) or do they “float”?

*Note: HUD now publishes the 60% LIHTC limits as well as the 50%. The LIHTC **rent** limits will be calculated using the 1.5 persons per bedroom methodology, as in the past and described below.*

Example: Calculating State Set-aside Income Limits

Method for calculating set-aside limits: double 50% limits X set-aside limit %.

Example 40% limits:

If the applicable MTSP 50% limit for one person is \$17,650

$$\$17,650 \times 2 = \$35,300 \text{ (100\% of applicable MTSP limit)}$$

$$\$35,300 \times 40\% = \$14,120$$



States Differ...on how additional set-asides are handled

Qualifying Households

Leasing Requirements:

Leases & Non-Transient Use

§ 42(i)(3)(B)(i) 8823 Guide Chapter 20

LIHTC must be used to build projects that house “non-transient” households. This means that there must be at least a 6-month initial term. The IRS also is clear that an owner cannot evict for “other than good cause”. After the first lease, terms are management, state law and state HFA issues.

**Supplemental Information:
Exceptions to the 6-month lease requirement.**

1. Single Room Occupancy Units (SRO)

These are unit that have shared living facilities, such as shared kitchens and shared bathrooms. Leases for SRO’s can be month to month.

§42(i)(3)(B)(iii)

2. Transitional Housing for the Homeless

Certain transitional housing for the homeless may be considered used other than on a transient basis provided the residential rental unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building-

- A. Which is used exclusively to facilitate the transition of homeless individuals to independent living within 24 months (*section 103 of the Stewart M. McKinney Homeless Act*) and
- B. in which a government entity or qualified nonprofit organization provided such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

Leasing Requirements:

Available to the General Public

**IRS Regs 1.42-9, 1.42-5 (c)(1)(v) IRS Notice 86-9
8823 Guide Chapters 12 and 13**

Fair Housing violations are reported to state HFAs and are non-compliance events. Also, preferences or occupancy restrictions cannot be used for a specific group (for example an employer or trade group).

Fair Housing

Fair Housing violations include:

- 1. An adverse final finding by HUD
- 2. An adverse final decision by a state or local FH agency that is substantially equivalent to HUD
- 3. An adverse judgment from a federal court

8823 Guide Exhibit 13-2

A Memorandum Of Understanding (MOU) is in effect Between Department of Justice (DOJ), HUD, and Treasury (IRS) that they will each share fair housing violation information with the other agencies in the MOU.

Methods of Verification

4350.3 5-13 / 5-53 to 56, 5-19 / 5-60 to 5-62, Appendix 3

There are 3 types of verification documentation *generally* approved for affordable housing programs that the LIHTC industry has adopted for best practices:



Overview:

1. Third party verification

2. Review of documentation

Reasons to use documentation that the household brings in:

1. If a third party verification is not needed, such as, birth certificates or divorce papers.
2. If 3rd party verification is delayed for 2 weeks.
 Include in file:
 Note explaining why 3rd party verification was not obtainable.
 Date-stamped original request & follow-up efforts.
3. If a 3rd party charges for verifications. Note: an owner may choose to pay, but may not pass cost to applicant/tenant.

3. Household Affidavit

If the first two methods fail, get a notarized statement or a signed affidavit detailing the needed information. This is only a last resort or supplemental to other verification.

Lifespan of Verification Forms

4350.3 5-17 B / 5-59 8823 Guide Chapter 4

Verifications can be used **120 days** from date received.

Section 8 Voucher Holders

IRS Reg 1.42-5(b)(1)(vii)

If the state allows, a letter from Section 8 issuing agency stating that the household is at or under the applicable income limits can be used to verify income for voucher holders. This is third-party verification.

When Assets Do Not Exceed \$5,000

IRS Rev. Proc. 94-65

It is not required to 3rd party verify assets if they do not exceed \$5,000. A thoroughly completed tenant-affidavit may suffice. This will not apply when other programs are on-site (such as Section 8, HOME or Rural Development).

Student Eligibility

§ 42 (i)(3)(D) & 8823 Guide Chapter 17

The Code forbids tax credit units being used for dormitories. How do we avoid this at LIHTC properties?

Generally, households made up entirely of full-time students do not qualify.

**The 1st question that we must ask: "Is everyone a FT student?"
 If "yes", they must meet an exception to qualify**



Full-Time Students...

- Attend a school with facilities and regular student body.
- Attend all or parts of any 5 months out of the year (not necessarily consecutively).
- Are considered full-time by school that they attend.
- Attend elementary, junior and senior high school as well as institutes of higher learning.

Verification

8823 Guide 17-2 & Exhibit 17-1 on page 17-5

Student status questions must be asked at move-in (and status verified, if necessary). *It also must be re-examined annually. The IRS has provided a sample form in the revised 8823 Guide.*

Student Status Exceptions

FT Student Households must meet one of **FIVE exceptions** continually to live in an LIHTC Unit while everyone is a FT student:

For these exceptions, all members must meet the exception:

- 1. All adults are married and ENTITLED TO file a joint tax return.**

Verification: copy of return or marriage certificate.

- 2. All adult members are single parents with minor children, the adult is not a dependent of any third party, and the children are only claimed by a parent.**

Verification: copy of tax return (if possible) or a signed affidavit that the adult in the household is not a dependent of anyone outside the household and the children are claimed only by a parent.

For these exceptions, one member qualifies a household:

- 3. The household includes a member who receives Title IV welfare (TANF in many states).**

Verification: TANF award letter or 3rd-party verification.

- 4. The household includes a member who formerly received foster care assistance.**

Verification: foster paperwork from welfare agency

HERA added this exception [Effective for eligibility determinations after 7/30/08].

- 5. The household contains a member who gets assistance from the Job Training Partnership Act (JTPA) or similar program.**

Note: the "Workforce Investment Act" has replaced JTPA (**4350.3 Exhibit 5-1/4**).

How to identify JTPA "similar" programs:

The program must:

1. Get federal, state or local government funding and
2. Have a mission similar to the one for the JTPA program:

JTPA as amended by the Job Training Reform Amendments of 1992 and the School-to-Work Opportunities Act of 1994. Sec. 2

"It is the purpose of this Act to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependence, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the Nation."

Rev Rul 2013-17
Same-sex couples qualify under this rule if they were legally married under state law



Determining Income Eligibility

The LIHTC Income Rules are located at...

IRS Notice 88-80

The LIHTC Program uses HUD's Section 8 method for determining anticipated income. The HUD 4350.3 REV-1 **CHG 3** (Particularly Chapter 5, sections 1 and 3) gives us Section 8's rules.

In the HUD 4350.3 "Paragraph references are presented in bold (e.g., **1-2 A**). Page number references appear in standard typeface without bold."

For Example: 4350.3 5-2 A / 5-2 = paragraph 5-2 A, which is on page 5-2.
(The first number in both paragraph and page references is the chapter number).

See the supplemental workshop on the following page and the tabs to this manual for helpful examples of HUD Handbook navigation



Types of Income

Earned Income
+ **Unearned Income**
+ **Income from Assets**
= **Annual Income**

Applicants must qualify by gross income.

"Gross" = income before any deductions. "Anticipated income" includes all raises, new jobs or any other income expected during the next year.

Whose Income is Counted?

4350.3 Figure 5-2 / 5-8

<u>Members</u>	<u>Earned Income</u>	<u>Unearned and Asset Income</u>
Head, Spouse and Co-Head	YES	YES
Other Adult	YES	YES
Foster Adult	YES	YES
Dependents:		
- Child under 18	NO	YES
- Foster Child	NO	YES
-Full-time Student 18 & over (Not head, co-head, or spouse)	YES up to \$480	YES
Temporarily absent Member	YES	YES
Permanently living in a hospital or nursing home	A Household Decision	
<u>Non-Members</u>		
Live-in Attendant	NO	NO
Guest	NO	NO



Overview: Annual Income Includes

4350.3 Exhibit 5-1 / 1 to 2

- | | |
|--|--|
| 1. Employment | 6. Welfare Assistance |
| 2. Self-Employment | 7. Periodic allowances (child support, gifts) |
| 3. Income from Assets | 8. Military Pay |
| 4. Social Security and Other Benefits | 9. Student Financial Assistance (for Section 8 assistance recipients) |
| 5. Payments in Lieu of Earnings | |

Overview: Net Family Assets Include

4350.3 5-7 A-G / 5-23 to 5-40 Exhibit 5-2

- 1. Cash and checking & savings accounts**
- 2. Revocable trusts**
- 3. Equity in real property**
- 4. Stocks, Bonds, T-bills, CD's, mutual funds & money market accounts**
- 5. IRA, 401(k) & Keogh Accounts**
- 6. Retirement & Pension Funds**
- 7. Whole Life Insurance**
- 8. Personal property held as an investment**
- 9. Lump-sum, one-time receipts**
- 10. A mortgage or Deed of Trust held in a household**

Differences from HUD Methodologies

Although the LIHTC program technically uses the Section 8 method for calculating income, some differences have developed. The main issue is that the HUD method was developed for a program that allows for interim recertification to ensure that rents are calculated correctly. The LIHTC program must anticipate income for the first year without the mechanism for mid-year adjustments. Because of this, some state agencies and investors have developed some conservative measures to deal with the uncertainty of the future. These, however, are not based on tax code or guidance, and so a manager must be informed on state policy.



States Differ...

- Counting income for unemployed and low-income adults
- Using the highest in a range
- YTD and raise calculations

Other Key Requirements:

Annual Income Recertification

8823 Guide Chapter 5

Each household must be recertified each year with a new TIC completed NO LATER than the 12-month anniversary date of the move-in or last recertification date. We must ask all of the same income, asset and student status information as in the initial certification. We will also ask about any changes!



HERA eliminates the recertification requirement for 100% LIHTC properties. [For years ending after 7/30/08]

NOTE: It is very important that you consult state HFA direction before discontinuing annual recertification at 100% properties. As a due diligence matter, about half of the states require one recertification.

– Early recertification MAY be acceptable to state monitors.

Start 120 days out by sending an interview notice. Repeat notices at regular intervals. Late recertifications are a non-compliance issue. Be committed to using lease clauses to enforce compliance.



States Differ...on recertification requirements for 100% LIHTC projects.

Other Key Requirements:**Available Unit Rule "AUR"
§ 42 (g)(2)(D) & IRS Reg 1.42-15**

This rule is also called the 140% or "next available unit" (NAUR) rule.

8823 de 14-1 & 5

For 100% LIHTC projects: *owners must demonstrate due diligence when moving in new households to make sure that all units that become available are rented to qualified households. If they move in an ineligible household and cannot demonstrate due diligence, they violate the available unit rule.*

For "mixed income" projects: If household's income increases to over 140% of the current qualifying income limit when they are recertified, they become "over-income". Credits can continue to be claimed on the unit as long as the next available unit (of equal or smaller size) **in the same building** is rented to a qualified applicant. The goal is to restore the applicable fraction, not counting the over-income household. Over-income units must remain rent restricted until the next available unit(s) are rented. If the rule is violated, all comparable or smaller 140% units fall out of the applicable fraction & minimum set-aside. A Unit is no longer "available" if a legally binding agreement is in place.

Example:

140% recert was completed July 1st. A comparable market unit is vacant, but a reservation binder was signed with a non-qualified household on June 25th and a security deposit was paid. The vacant unit is not "available" and can be rented as a market unit

Other Key Requirements:**Basics of Compliance Reviews
IRS Reg 1.42-5 8823 Guide Chapters 1 and 19**

Compliance reviews are conducted by the state HFA or a contractor (contractors can do all state HFA duties EXCEPT issue 8823s).

- The 1st visit will be no later than the end of the second calendar year after the last building is placed in service.

Example: The last building is PIS 6/1/12
1st visit must be no later than 12/31/14

- The state will return at least every 3rd year thereafter.

The reviews include a physical inspection of exteriors and unit interiors, including health & safety issues. They also include a review of tenant files for those same units. At least 20% of the units and files are reviewed. Units inspected are inspector's choice.

State Inspections Part A. Physical Inspections

IRS Reg 1.42-5

8823 Guide Chapter 6

Physical site monitoring by state HFAs were required beginning on Jan 1, 2001.

A state may choose between:

1. Uniform Physical Conditions Standard (UPCS, a HUD code),
2. Local Code, or
3. RD – If MOU is in place

All violations of above codes must be reported, even if corrected at review.

Physical inspection practical pointers:

- Notify tenants in advance of the inspection date.
- Arrive before the inspector.
- Give the inspector your full attention and cooperation.
- Take notes.
- Document problems and mention your plans for correction.
- Never attempt to hide anything.

The instructions for the new IRS Form 8823 in 2005 referenced the *UPCS Dictionary of Definitions*. That Dictionary defines very specific severity codes for physical problems 1-3 (with 3 the most severe) and Health and Safety. The UPCS dictionary can be found at:

www.hud.gov Search Keywords - "UPCS Dictionary"

UPCS 5 "Inspectable areas": Overview

1. **Site**
2. **Building Exterior**
3. **Building Systems**
4. **Dwelling Units**
5. **Common Areas**

"**Health and Safety**" applies to all areas.

Routine maintenance is VITAL. Deficiencies left uncorrected often increase the severity level.

Inspectable Area:

1. Site

IRS Form 8823 Instructions

"The site components...must be free of health and safety hazards and be in good repair."



Areas Inspected

- | | |
|---|--|
| <ul style="list-style-type: none"> • Fencing • Retaining Walls • Grounds • Lighting • Mailboxes • Signs (project or areas of the project) | <ul style="list-style-type: none"> • Parking lots/driveways • Play areas and equipment • Refuse disposal equipment • Roads • Storm drainage • Walkways |
|---|--|



Areas of possible concern

- | | |
|---|--|
| <ul style="list-style-type: none"> • Abandoned vehicles • Dangerous walkways or steps • Poor drainage • Septic tank back-ups • Sewer hazards | <ul style="list-style-type: none"> • Excess accumulation of garbage and debris • Vermin or rodent infestation • Fire hazard |
|---|--|

Inspectable Area:**2. Building Exterior**

"Building Exterior. Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair."

Inspectable Area:**3. Building Systems**

"Building Systems. Each building's domestic water, electrical system, elevators, emergency power, fire protection, HV AC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair."

Inspectable Area:**4. Dwelling Units**

"Dwelling Units. Each dwelling unit within a building must be structurally sound, habitable, and in good repair... All areas and aspects of the dwelling unit must be free of health and safety hazards, functionally adequate, operable, and in good repair."

**Areas Inspected**

- Bathroom & kitchen
- Call-for-aid system (if applicable)
- Electrical systems
- Hot water heater
- HVAC
- Lighting
- Outlets/switches
- Patio/porch/balcony
- Smoke detectors
- Stairs
- Ceilings, doors, walls, floors, windows

**Units must have**

- Hot and cold running water
- Bathroom in proper operating condition:
 - usable in privacy,
 - adequate for personal hygiene
- Adequate source of potable water
- At least one smoke detector on each level of the unit

Inspectable Area:**5. Common Areas**

"Must be structurally sound, secure, and functionally adequate for the purposes intended."

**Areas Inspected**

- Basement
- Garage/carport
- Restrooms
- Closets, utility and mechanical rooms
- Community rooms
- Halls/corridors
- Stairs
- Kitchen
- Laundry rooms
- Office
- Porch
- Patio
- Balcony
- Trash collection areas

Inspectable Area:**Health and Safety**

"All inspectable areas must be free of Health and Safety hazards."

Examples of health and safety issues:

- Air quality
- Electrical hazards
- Elevators
- Emergency/fire exits
- Flammable materials
- Garbage and debris
- Handrail hazards infestation
- Lead-based paint

Inspectable Area:

Health and Safety

"All inspectable areas must be free of Health and Safety hazards."

Examples of health and safety issues:

- Air quality
- Electrical hazards
- Elevators
- Emergency/fire exits
- Flammable materials
- Garbage and debris
- Handrail hazards infestation
- Lead-based paint



Exigent (immediately life-threatening) hazards must be corrected promptly. The inspector will leave a list and a tight deadline to fix these issues.



These issues include:

- Air quality problems such as propane, natural gas, or methane gas detected.
- Electrical hazards such as exposed wires, open panels, and water leaks on or near electrical equipment.
- Carbon monoxide hazards such as gas or hot water heaters with missing or misaligned chimneys.
- Emergency equipment, fire exits, and fire escapes that are blocked or not usable.
- Fire safety issues: missing or inoperative smoke detectors (including missing batteries), expired fire extinguishers.
- Window security bars preventing egress from a unit.

The most common issues that Zeffert & Associates finds include:

- Smoke detectors that do not work
- GFI outlets that do not work
- Blocked egress

These can usually be prevented beforehand by a walkthrough.

State Inspections Part B: File Reviews

IRS Reg 1.42-5 8823 Guide Chapters 1 and 19



Are the tenant files ready for inspection? Check for the following:

- All required rental documents must be on file.
- All documents must be completely filled out, signed and dated.
- All income and asset calculations should be clearly shown.

When a state discovers potential non-compliance

IRS Reg 1.42-5 8823 Guide Chapters 1 and 19

The state HFA will report any potential non-compliance to the IRS on form 8823, if the problem was not corrected by the date that the owner received notification of audit.

For issues discovered in audit, the IRS allows UP TO a 90-day correction period, but the state may be more restrictive. Up to a 6 month extension is allowable if the reason is valid (as determined by the state agency). The state must file the 8823 within 45 days of end of the correction period.

A written response to all items must be made to the state HFA as they direct. Uncorrected items will make tax credits subject to recapture.



IRS Form 8823

This form is how the state reports non-compliance to the IRS. It includes a checklist of the main categories of non-compliance and whether the building is back in compliance.

Combining LIHTC with Other Programs

(Such as HOME-HUD-Rural Development-Bonds-NAHASDA)

When Combining Other Funding...

The various program requirements must be compared. When examining a specific rule in comparison to another program, one of three approaches will be necessary:

1. When the other program has no similar rule, apply the rule.
2. When the programs have similar rules:
 - a. Identify the most restrictive version of the rule. Usually this will satisfy both programs.
 - b. Sometimes one is not more *restrictive*, just *different*, and both must be applied.
3. When a true conflict exists, discuss with all interested parties (program monitors and owners).



**Workshop:
Income Limits**

- For HUD Section 8, the income limit is usually the VERY LOW 50% AMI, compared to the gross household income.
- For LIHTC (with 40-60 minimum set aside) the limit for a property is the 60% MTSP limit compared to gross income.
- For RD, the limit is 80% AMI + \$5,500 compared to the household income adjusted for expenses and allowances.
- A HOME unit is LOW HOME (50% AMI), using gross income.

The most conservative limit that will satisfy both programs at the following combined-program properties:

LIHTC / HUD Property

LIHTC / RD Property

LIHTC / HOME Unit



**Workshop:
Verification Lifespan**

- For RD, verification are good for 90 days, but can be extended through verbal verification for an additional 90 days.
- For a HOME unit, verifications are good for up to six months.

The timeframes that will satisfy both programs at the following combined properties:

LIHTC/RD unit

LIHTC/HOME unit



**Workshop:
Lease Term**

- For HUD, the mandated lease term is 1 year.
- For HOME, the lease term is 1 year, unless there is a mutually agreed upon lesser term of not less than 30 days.

What is the lease term that will satisfy both programs at the following combined-program properties?

LIHTC/HUD Property

LIHTC/HOME Unit

A Few Words of Encouragement...**We All Do this Job Well...**

The last Government Accountability Office (GAO) review of the program was positive. It is a challenge to learn this program well, but the more effort something takes, the more gain is realized. The LIHTC is active in all states and qualified personnel are in demand. Not all jobs provide personal challenge, portability, opportunity for growth, a degree of job security and are also beneficial to Society. We strongly feel that LIHTC-related jobs are.