

# **The IRS 8823 Audit Guide: What Every Asset Manager Should Know**

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# The Audit Guide

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- ❑ Released by the IRS in January 2007
- ❑ Instructs monitoring agencies how and when to submit a Form 8823 to the IRS
- ❑ Developed to standardize compliance amongst the state and local agencies

# The Audit Guide cont'd

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- ❑ The Audit Guide has 26 chapters and nearly 200 pages
- ❑ This presentation focuses on the most important aspects of the guide for an Asset Manager to know
- ❑ The chapter references in this presentation refer back to chapters in the guide

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# CHAPTER TWO

# Correcting Noncompliance

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- ❑ Owner must correct all incidents of noncompliance for a category on the IRS Form 8823 before considered back in compliance for that category
- ❑ Owner must resolve all categories of noncompliance before the agency can report the building back in compliance

# Example

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Owner receives 8823 for Building A

Two units are out of compliance under the full time student rule and three units have residents who were over the income limit at initial occupancy

The owner must correct the noncompliance in all 5 units before the state agency can report the building back in compliance

# HFA Reporting Requirements

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- IRS instructs monitoring agencies to report any changes in a building's eligible basis or applicable fraction
- Not all agencies have been reporting these changes

# Decreasing Eligible Basis?

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- Took a unit originally included in basis out of service
- Charges a fee for the use of a common area originally included in basis
- Receives a Federal grant for the operation of the property



# Decreasing A/F?

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- Fewer tax credit units than needed
- Less tax credit floor space than needed
- Violation of the Available Unit Rule
- Violation of the Vacant Unit Rule

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# CHAPTER THREE

# Quality Control

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- Owners should have an effective quality control system
- Agencies don't report noncompliance if the owner finds and fixes it before receiving notice of a monitoring review
- IRS is rewarding responsible ownership

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# CHAPTER FOUR

# Transfers in Same Building

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- Two units involved in the transfer swap their status
- Resident does not need to requalify
- Resident takes their tax credit status, lease, income certification, including its effective date, to their new unit

# Transfer to a Different Building

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- ❑ IRS approved transfers between buildings
- ❑ If resident's income is not more than 140% of their income limit, they may transfer to another building at the same property
- ❑ Resident takes their tax credit status, lease, income certification, including its effective date to their new unit

# Example

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A tax credit resident transfers from Unit A in Building A to Unit B in Building B.

Unit B in Building B was a market unit.

After the transfer, Unit A in Building A is a market unit and Unit B in Building B is a tax credit unit.

The resident's income was less than 140% of the income limit.

## Transfers between Buildings cont'd

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- A resident may transfer to a different building at the same property
- A property is defined on Line 8b of a building's IRS Form 8609
- A resident may transfer to another building listed as part of the same property on line 8b of their building's 8609



# Acquisition/Rehab Properties

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- ❑ Very good news from the IRS
- ❑ IRS answers outstanding questions on acquisition/rehab properties
- ❑ IRS has taken a generous approach in clarifying what owners must do to initiate the credits at acquisition/rehab properties

# What we already knew ...

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- Credits in service from the date of acquisition
- Credit period is the same 10 years for both acquisition & rehab credits
- Owner calculates the first year A/F the same for both acquisition & rehab credits

# What we already knew ...

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- ❑ A building can begin to generate credits at acquisition if the owner finishes its rehab the same year
- ❑ If the owner finishes a building's rehab the following year, it can begin to generate credits January 1 of the year the owner completes its rehab

# Question One

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- Does an owner need to complete the income certifications for the existing residents prior to or on the date of acquisition to start generating credits at acquisition?

# Answer One

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- No. If an owner completes a resident's initial TIC within 120 days of the date of acquisition, the effective date of the TIC is the date of acquisition.
- The unit can begin to generate credits at acquisition if the owner uses the resident's income and income limit effective on the date of acquisition.

# Answer One cont'd

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- If an owner completes an initial TIC more than 120 days after acquisition, its effective date is the day the last adult household member signs the certification.

# Example

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Owner acquires building on 4/1/07 and finishes its rehab in 10/07.

S/he completes the income certifications for the existing residents between 4/1/07 and 7/31/07.

The units begin to generate acquisition and rehab credits on 4/1/07.

## Question Two

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- If an owner completes the income certifications for existing residents at acquisition but does not begin the credit period until the following year, can the units be treated as low income units for the first year of the credit period?



# Answer Two

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- Yes, the income certifications the owner completes at acquisition can enable the building to generate credits the following year.
  
- The Audit Guide cites Revenue Procedure 2003-82.

## Answer Two cont'd

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- If the owner completes an initial TIC more than 120 days before beginning the credit period, s/he should test the family's income for the 140% Rule when beginning the credit period.
- If the initial TIC was effective within 120 days of the start of the credit period, the owner does not need to test the family's income for the 140% Rule until their annual recertification.

# Example

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Owner acquires the building in 4/07 and completes its rehab during 2008.

S/he begins the credit period in 2008.

S/he completes the initial TICs between 4/1/07 and 12/31/07.

S/he must test a resident's income for the 140% rule if s/he completed their initial TIC prior to 9/1/07.

# Question Three

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- Can a unit generate a tax credit during the months before the owner completes its rehab?

# Answer Three

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- Yes! A unit can generate a credit the months of the year the owner completes the building's rehab, including the months that come before the owner completes the unit's rehab.

# Example

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Owner acquires site on 2/1/07 and certifies all existing residents eligible by 5/31/07.

Ms. Blue lives in Unit A in Building A until she must relocate because the owner takes it out of service for its rehab on 4/30/07.

Ms. Blue moves to Unit B in Building B and lives in this unit for the rest of the year.

Example cont'd

## Example cont'd

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Ms. Blue generates a tax credit for Unit A in Building A Feb through April of 2007.

Ms. Blue generates a tax credit for Unit B in Building B May through December of 2007.

Owner completes Building A's rehab and places it back in service July 28, 2007.

The units in Building A may generate tax credits Feb through April and August through December of 2007.

# What is a low income unit?

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- ❑ A unit occupied by a certified resident before the beginning of the credit period and tested for the Available Unit Rule
- ❑ A unit occupied after the beginning of the credit period by qualified residents, regardless if the owner has incurred the rehab costs



# What is a low income unit cont'd?

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- A unit occupied by an income qualified household that moved from another unit within the property. Their lease and TIC, including its effective date, move with them.
- A vacant unit that is suitable for occupancy and last occupied by a qualified household, regardless if the owner has incurred its rehab costs.

# What isn't a low income unit?

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- ❑ A unit with a non-qualified resident
- ❑ A vacant unit last occupied by a non-qualified household
- ❑ A unit not suitable for occupancy, including a unit undergoing rehabilitation. Noncompliance is corrected when the unit is suitable for occupancy.

# Back in Service Post-Rehab

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- ❑ When a unit is back in service after rehab, its status is based on the household that occupied it just prior to being taken out of service.
- ❑ If the unit was last occupied by a qualified resident, it is a low income unit and eligible to generate a tax credit.

# Out of Compliance

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- A unit is out of compliance on the date an ineligible household moves in.
- It is not back into compliance until occupied by a qualified resident.

# Example

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Ms. Red, who has too much income,  
occupies Unit A on 4/1/07.

Ms. Red moves out on 4/30/08.

Ms. Green, who is LIHTC eligible,  
occupies Unit A on 7/1/08.

Unit A stops generating a tax credit in April  
2007 and does not generate a  
tax credit again until July 2008.

# Forgot to do a TIC?

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## □ Two options:

- Do a TIC using the current income and income limit. Unit is in compliance the date the last adult signs the TIC; or
- Do a TIC retroactive to the date of occupancy. Assuming the resident is eligible, there is no noncompliance and the agency does not submit a Form 8823.

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# CHAPTER SEVENTEEN

# Full-Time Student Rule

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- A full-time student attends school for 5 months out of a *calendar year*.
- The 5 months need not be consecutive
- Owner should verify the status of a student as full-time or part-time with the educational organization



# Full-Time Student Rule cont'd

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Educational organization is “one that normally maintains a regular facility and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. Includes elementary schools, junior and senior high schools, colleges, universities, technical, trade and mechanical schools.”

# Minors as Students

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- ❑ The IRS considers minors in in grades K-12 to be full time students.
- ❑ The IRS has clarified verbally that an unborn child can qualify a household that is otherwise ineligible under the full time student rule

# Out of Compliance

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- A unit is out of compliance on the first day of the fifth month in a calendar year a full-time student attends school.

# Example

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Resident attends school full-time  
February – May.

They begin attending school full-time again in  
September of the same year.

The unit is out of compliance on September 1.

# The Audit Guide

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- ❑ To download a complete copy of the Audit Guide, go to [www.lizbramletconsulting.com](http://www.lizbramletconsulting.com)
- ❑ Click on *Hot Topics in Housing*

# More Questions???

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