

Q1 Do you have any questions for IRS regarding the submission of Form 8610, "Annual Low-Income Housing Credit Report"?

As someone newer to tax credits, it would be helpful to have a brief explanation of what purpose this form serves. Additionally, some clarification on what the credit ceiling means. Incorporated into the Power Point presentation. Basically, the agency is reporting in summary format how they allocated their credits for the year along with reporting any unused credits, or carryover credits from a prior year.

Will agencies be able to submit this form electronically? No. It costs money to set up electronic filing and it is unlikely IRS will have funding to implement electronic filing for 56 forms as it would be cost prohibitive based on the limited impact. We are looking at alternative options starting with Form 8823 and possibly expanding to other returns, if the process works.

Since our agency inspects more buildings for compliance purposes than is required, why is an explanation required for a difference in Part III #14 & #15? An explanation is requested to ensure that the minimum number of physical inspections and tenant file reviews is completed each year based on the requirements in Rev. Proc. 2016-15, or to justify why the number of reviews is more, or less. In your case, since the number of inspections is greater than the number that is required to be monitored we consider that information in evaluating the State's level of Compliance Monitoring. An explanation of less monitoring than required will always be needed. However, if you are inspecting more than the minimum, I understand why you think an explanation is unnecessary. Consideration will be given to this comment when the form is updated.

Would it be possible that instead of combining line 2a in the 8609 to separate the 2(a)(1) and 2(a)(2) line items? We can consider that the next time the form is revised. I suspect why it is combined relates to the form line items and ensuring it remains as a one-page document.

We wish would automatically sum. That apparently is a huge problem with the 8610 - math errors? It is unlikely that the form would be revised to automatically sum, but we are working on a reconciliation check sheet that should assist the agencies in reconciling the forms prior to submission instead of finding errors after filing.

Q2 Are the Form 8610 instructions clear? If not, why not?

More context on what some of the terms and data points signify would be helpful - so we better understand why we are reporting this information and how it gets utilized. It's a little unclear who these forms get sent to and if they can be submitted electronically. The presentation should provide the information on terms and data points. The forms are used by the Program analyst and Counsel in ensuring the credit are allocated and the compliance monitoring is completed since we are charged with overseeing the administration of the credit.

In Part III of the 8610 reference to building. Could the instruction clarify that for properties with multiple BINS, "building" refers to a BIN or the entire property, and whether Owner's Multiple Building election affects how a "building" is defined? We will consider adding clarifying language to the instructions the next time the form and instructions are revised. The instructions refer the reader to the information in

the compliance monitoring Regulation 1.42-5 where some more detail is located. I understand the request for clarification.

What is meant exactly by "subject to monitoring"? Required number of buildings inspected. The information on the buildings subject to monitoring is found in Treasury Regulation 1.42-5T(b)(iii) (A) Timing. The Agency must conduct on-site inspections of all buildings in the low-income housing project and must review low-income certifications of the low-income housing project—

(1) By the end of the second calendar year following the year the last building in the low-income housing project is placed in service; and

(2) At least once every 3 years thereafter.

(B) Number of low-income units. The Agency must conduct on-site inspections and low-income certification review of not fewer than the minimum number of low-income units required by guidance published in the Internal Revenue Bulletin.

Refer to Rev. Proc. 2016–15 Section 4. The minimum number of low-income units for which an Agency must conduct on-site inspections and low-income certification review is the lesser of (1) or (2) below—

(1) 20 percent of the low-income units in the low-income housing project, rounded up to the nearest whole number of units, or

(2) the Minimum Unit Sample Size set forth in the following Low-Income Housing Credit Minimum Unit

What is meant by No. of buildings for which “compliance monitoring was completed”? Actual number of buildings where compliance monitoring outlined in Treas. Reg. 1.42-5 was completed. Initial and subsequent physical inspections and tenant record reviews for at least 20% of the LIH units in a project, or the minimum number per Rev. Proc 2016-15. By the end of the second calendar year following the last unit being placed in service. At least once every three years after the first one.

Are these questions geared to the physical inspection and a file audit or only the UPCS? Both

Q3 Are there any barriers to accurate reporting on Form 8610?

What if a REAC is conducted by HUD instead of a UPCS by HFA staff? No difference in reporting the number subject to monitoring and compliance monitoring completed if REAC does the inspection vs. HFA staff.

We allocate about 70% of our allocation to non-profits, however, if I put the total amount on the form, it implies that that is our set-aside amount. Now, I only report the 10% for set-aside purposes. It is not clear why you would not follow the form instructions. Line 5g. should show the total amount of non-profit set-aside, not just 10% as show in the instructions.

Enter the sum of the following amounts.

- Any amount reported on line 1b of an attached Form 8609 with box 6f checked.
- Any amount reported on line 5 of an attached Schedule A (Form 8610) with question 3b answered “Yes.”

Q4 Do you have any questions for IRS regarding the submission of Form 8610 Schedule A, "Carryover Allocation of Low-Income Housing Credit"?

It's unclear to me how carryovers occur and are permitted resulting in use of this form. A carryover allocation is an allocation that meets the requirements of section 42(h)(1)(E) (building based) or (F) (project based). If the requirements of section § 42(h)(1)(E) or (F) that are required to be satisfied by the close of a calendar year are not satisfied, the allocation is not valid and is treated as if it had not been made for that calendar year. IRC 42(h)(1) **General rule 1) Credit may not exceed credit amount allocated to building.-- (A) In general.**--The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection. (E) and (F) are exceptions to the general rule when >10% of the projected basis is completed by the end of the calendar year.

When and why were the Building Identification Numbers (BIN) removed from the Form 8610 Schedule A? The BIN cannot be assigned because at the time that the carryover allocation is determined it is not clear if the project will be separate buildings, or part of a multiple building project. I am not aware that the BIN was removed.

Since the 9% is fixed, should users be completing Lines 6b and 6c? I believe we have left that box blank in the past. Yes, if applicable.

For Question 6, does the IRS consider the Carryover Allocation Agreement to be the Binding Agreement referenced? If so, why is it called out as the "binding agreement"? How does the IRS use this information (in 6a-6c)? Generally, a binding agreement described in paragraph (a)(1) of this section is an agreement by the Agency to allocate credit to the taxpayer at a future date. The binding agreement may include a reservation of credit or a binding commitment (under section 42(h)(1)(C)) to allocate credit in a future taxable year. A reservation or a binding commitment to allocate credit in a future year has no effect on the state housing credit ceiling until the year the Agency actually makes an allocation. However, if the binding agreement is also a carryover allocation under section 42(h)(1)(E) or (F), the state housing credit ceiling is reduced by the amount allocated by the Agency to the taxpayer in the year the carryover allocation is made. For a binding agreement to be a valid carryover allocation, the requirements of paragraph (a)(1) of this section and § 1.42-6 must be met.

How does the IRS use this information (in 6a-6c)? IRS uses the information on line 6a-6c to ensure the allocation of the credit ceiling amount for each year is accurate.

Q5 Are there any barriers to accurate reporting on Form 8610 Schedule A?

Would it be possible to make this a document that can be merged with an Excel spreadsheet? This would save time and would be more efficient than having to hand-enter a Schedule A for each project. IRS would not be able to accomplish this request.

Q6 Are the Form 8610 Schedule A instructions clear? If not, why not?

But it would be great if the IRS could use plainer language in its documents for ease of use. **Noted.**

As a follow up to Q4 above, could there be a note in the instructions that clarifies to the user that Lines 6b and 6c should/shouldn't be completed? **We will consider this request the next time the form is updated.**

Q7 Do you have any questions for IRS regarding the submission of Form 8609, "Low-Income Housing Credit Allocation and Certification"?

Adding some definitions would help so I better understand what the form is and why we are doing it. Also how it connects to the other TC IRS forms. **We will consider this request for definitions in the next update to the instructions, but they are generally available in the ATGs and the Code and Regs. The Form 8609 Part I is the allocating document for credits to specific properties, so the totals of all properties are combined to determine Line 6a. of Form 8610 to verify the annual credit ceiling is allocated. Form 8609 Part II is where the taxpayer/owner makes elections and identifies the eligible and qualified basis used to compute the credit amount. The basis amounts are used to verify the credit claimed on the taxpayer's income tax return.**

Why would we leave the date of allocation blank? We use the bond issue date and find it very useful for many reasons. Why would the lack of information be preferred? **The information is excluded regarding the date of allocation because if no allocation is required (i.e., 50% or greater tax-exempt bond financed building), then there is consistent reporting of the situation. It is suggested that you add the date after submission of the form to IRS that way we have Line 1a. blank when there is 50% or greater tax-exempt bond financing and you can continue to use the date for internal purposes.**

What will process and documentation be going forward for income averaging? **IRS is awaiting official guidance from Treasury before providing any details related to income averaging. The process will be the same as the other set asides.**

For projects with over 99 buildings, why cant we use the same BIN for building 100 and up? **Then the format of the BIN will not match the required BIN format outlined in IRS Notice 1988-91 because it will contain too many characters. Suggest that the State Agency have a consistent method of assigning BINs when over 100 buildings in the same project.**

When will the Form 8609 instructions be updated to match the 5.18 rev Form 8609? **Done.**

If a state's QAP requires the minimum set-aside irrevocable election to be made in the initial LIHTC Application, can the state's allocation staff auto-fill line 10-c in Part II of the Form 8609 based upon the irrevocable election made in the LIHTC Application? **No, the State Agency cannot auto fill Part II Line 10-c.**

If no, how will the IRS address the issue of a Taxpayer completing Part II, line 10-c differently than the irrevocable election shown in the carryover allocation agreement (states the election is a condition of the allocation) and the recorded Land Use Restrictive Covenants Agreement ("LURA") for the Project?

We will address the issue during audit, or if notified by the State HFA. The election is not made until the owner files Form 8609 Part II, so that is what IRS will use in evaluating compliance.

How should the state compliance divisions monitor the Project - per the election made on the Form 8609 or the LURA if the Part II, line 10-c discrepancy described previously occurs? See answer above, the Form 8609 Part II Line 10-c.

If no, could Part I of the Form 8609 be modified to require the state allocating agency to enter the irrevocable election and date of the election? It is not the State Agencies' election to make.

Could there be a database created that provides allocation agencies access to review Part II irrevocable elections sent to the IRS to ensure records match? No, IRS disclosure rules do not allow us to share reported information although if you suspect there is a discrepancy you can notify me at sbse.lihc@irs.gov

Currently, there is no mechanism to ensure elections made to the IRS by owners are the same as represented to the allocating agency. The HFA must rely solely on what is being provided by the owner. An Owner wanting to circumvent the system could do so by sending the state allocation one version and the IRS another. True. We will consider this issue when tax law changes are open for discussion with Counsel., but right now IRS would not be aware of any discrepancy unless an audit was conducted on the taxpayer, or the State Agency notifies me if they suspect there is a discrepancy. However, the Form 8609 instructions state that the State HFA may require a copy of Form 8609 Part II is provided to them, so you can make that part of your communications with the Owners.

Under Section A , could a separate field be added to act as a building identifier if needed. (I.E. Building 1, 2,3, A, B, Etc We will take this under consideration for the next form update.

There seems to be a lot of confusion on the part of the development community regarding the HFA's responsibility in managing the boost in line 3b and the qualified basis in line 3a. I would like to hear a discussion about how to complete these two lines. Addressed in the webinar.

The HFA only submits the top portion the Owner submits the completed 8609. Correct.

Yes - having the form auto sum or multiply would be great. Unlikely to be possible, but will consider during next form update.

Also I think they should flip the lines and have the qualified credit amount first, then the credit rate, and then the amount. It seems backwards. I agree, so will consider this issue during the next form update.

Q8 Are the Form 8609 instructions clear? If not, why not?

All States could benefit from more information regarding how to implement BIN numbers. The IRS has made it clear that the BIN assigned to the building for the first allocation. Correct.

The BIN assigned at allocation must be used for the subsequent allocation however there are variables that come into play that can make it complicated. 1) Existing property with existing BIN in Post-15

receives new credits so you would use the exact same BIN as indicated on the first issued 8609 based on the first year of allocation. For example existing is OR96-14101, so continue using that BIN for new allocations of credits. **Correct.**

2) Existing Property with existing BIN in Post-15 packaged with other buildings that never had credits. You should use the existing BIN for the building that previously had credits and a new BIN for each building that never had credits in the past which are packaged together. **Correct.**

3) Two existing properties with separate existing credits packaged together as one new credit deal. You should use existing Numbers for each of the two existing buildings and indicate they are part of the multi building project. **Correct.**

Please provide clarification of "Federally Subsidized" on question 6 of Part I. Should projects with HUD or USDA subsidy have this option checked? **No, it is "federally subsidized" if tax exempt bonds were used for financing the project.**

Provide more guidance on the income averaging election. **Waiting for clarifying guidance from Treasury.**

For example: Box A- Address of Building. If it's a multi BIN Project, which address is entered here. **The address of the building that matches the BIN that the credit is being allocated to. It is the building address, not the project address, so a distinction between the buildings is necessary.**

We have received questions from the owner regarding where to send their completed 8609 forms with Part II completed. Maybe you can include that mailing address in the instructions for the owners. **It can be found on page 2 of the Form 8609 Instructions.**

New staff always get confused on line 6 and determining what type of project the allocation is for and for acq/rehabs. Section 42(e) has to do with bond deals not if the project has rental subsidy. That trips up staff and the investors sometimes but I use it as an educational session! **Correct and that it is a good idea to use it as a teaching moment.**

Are Housing Credit Agencies permitted to insert the entire eligible basis on line 3a, including "excess basis" not necessary for the credit allocation? **No, the qualified basis on line 3a. must only include the basis used for the credit allocation. That is the basis which corresponds to the credit is allocated, so if there are changes no "excess basis" would be considered when disallowing the credit. The credit amount is based upon the amount needed to make the project financially feasible, so it may not include all costs associated with the project and therefore the credit amount is limited to the qualified basis used to compute the credit.**

Is there a way to have a greater number of spaces on line 3b so that the percentage is not a whole number? **Generally, this would be a whole number for the percentage of eligible basis in a high cost area, but we can consider this issue for the next form revisions.**

Q9 Are there any barriers to accurate reporting on Form 8609?

The lack of timely, complete, and accurate 8609 Applications submitted by Developers is a barrier to accurate reporting on the Form 8609 and the Form 8610. **Not something IRS can solve. Do you have suggestions?**

It would be useful to have a formal attachment for owners to complete when electing a multiple building project. This would help ensure necessary information is provided in a consistent format. **We will consider that as a possible add on to the Form 8609 Line 8 b.**

It there are many (multiple) BINS all with various non compliance issues, it is tedious to complete one form for each non compliance by BIN. **Noted.**

(1) Is there any way to include an extra digit to the BIN? There have been cases where projects in California have had more than 99 buildings so it has been challenging to come up with a way to assign the BIN for those buildings at 100 or more. **Understood, but an extra digit is not possible based on our IRS processing. Will consider changes in the future, but in the interim use a consistent method to assign BINs when 100 buildings or more.**

(2) Would it be possible to make Form 8609 a document that can be merged with an Excel spreadsheet? This would save time and would be more efficient than having to hand-enter a Form 8609 for each building in a project. Most projects require multiple Form 8609s because most projects have multiple buildings. **Understood. We are exploring all options of electronic preparation and submissions of all LIHC forms including Form 8609. However, the discussion is at the beginning stages.**

The only issue is when there are so many buildings, particularly for acq/rehab projects. There is more change for errors when there are so many buildings. **Understood.**

Q10 Do you have any questions for IRS regarding the submission of Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition"?

There is a lot of confusion for HFAs and owners/agents regarding when an 8823 is actually required (particularly for deficiencies that are corrected during the same inspection visit). It seems silly to have to file a form noting the deficiency and an additional amended form noting the correction when handled in the same time frame. **Under Regulations section 1.42-5(e)(3), report all deficiencies to the IRS whether or not the noncompliance or failure to certify is corrected at the time of inspection. In order to meet the requirements of IRC 42, in your scenario the non-compliance and the compliance should be reported using Form 8823 which can show both and one date.**

It would be nice to be able to submit electronically via email or a portal of some kind. **We are working on being able to convert mailed copies of the 8823 into a scanned usable format that can be uploaded to our database. The next phase of the process if the conversion works is to set up some type of electronic secure mailbox or portal, if technologically and procedurally possible and if there is funding.**

Box 12. Should this box be if the only additional information is for one of the boxes above that already indicates "attach explanation" is needed? **No, I would look at the opposite situation and check the box along with provide additional information for the items above that do not indicate to attach an explanation because you are already providing an explanation for those items, but if one is needed complete Box 12 and attach additional information.**

An updated 8823 form has not been provided to include a line item for income averaging minimum set-aside election. We will not be updating Form 8823, so if you have a non-compliance issue related to income averaging minimum set-aside check the issue 11f. because it refers you to the instructions and the other set aside options are presented as examples in parenthesis.

Yes, Building Name, it should say Project Name. Also, 11b and 11d could be applicable to the Initial certification, but form is only asking about annual certification. Noted, will consider changing the box showing building name to project name. My initial reaction would be that we use the form for single building projects, so building works for all, but project may not. I agree with the comment about 11b. and 11d. since the owner could be at fault for problems with the initial income certification, so we will consider revising the language on the form.

From the perspective of IRS, is there a benefit to states reporting physical inspection items that are categorized as Level 1 or Level 2 if there does not appear to be a systemic issue? When is it appropriate to check the box on Line 3? Under Regulations section 1.42-5(e)(3), report all deficiencies to the IRS whether or not, the noncompliance or failure to certify is corrected at the time of inspection. We are looking into the possibility of providing some relief under very specific circumstances, but for now the law states that all physical inspection items are reported.

Should we do this when an owner has a change of address? No.

If noncompliance is not corrected within the correction period but is corrected within the 45 days that the state has to file the 8823, how should this be reported? Report the out of compliance on the inspection date and back in compliance when the issue is corrected within the 45 days you that you have to file the form 8823.

Would it be "out of compliance" with a separate form filed for the correction or can we report it as out of compliance and back in compliance on the same form? You can use the same form if the back in compliance takes place before the due date of the Form 8823.

Can Form 8823s submitted to the IRS be rescinded? No, there is no provision in the law for rescinding Form 8823 and our systems including the LIHC database are set up accordingly. A second form showing the non-compliance was corrected is necessary since the Form 8823 has already been filed with IRS. You can indicate the date back in compliance is the same date as out of compliance if warranted based on the owner proving they were never out of compliance.

I've always wondered on line 11a; if my finding was that I couldn't tell if a household was over income or not, but then management produced proof that they were under the income limit within the correction period, if I should report that as Out of compliance and then corrected or if I should report it at all? I would suggest that in this specific situation when you are not sure if they are out of compliance at the date of inspection that you should not report the out of compliance until you know for sure. If you later verify that they were out of compliance during the file review date then use that date for the out of compliance date and then you could report back in compliance if the issue is resolved during the correction period.

Q11 Are the Form 8823 instructions clear? If not, why not?

Better clarity on what is deemed noncompliance to be reported on the form would help. And timing of initial submission/correction. We are trying to accomplish better clarity through the webinar. File Form 8823 no later than 45 days after (a) the building was disposed of or (b) the end of the time allowed the building owner to correct the condition(s) that caused noncompliance. For details, see Regulations section 1.42-5(e).

Would like more information on common area or exterior findings (fencing, sidewalks etc) and how to report. We have been told that we report on the building that is closest to the finding but it would be nice to have written guidance on that. Checking with Counsel for guidance using a Chief Counsel Advisory request.

Item 8 says...."Do Not complete Item 8 for a building disposition. Instead skip to items 9-12, and complete item 13." Shouldn't it say...."Instead skip items 8-12,....."? The 9/15 revision does state exactly what you suggested, so I am not clear what you were looking at when you saw the other language.

The 8823 does not contain instructions for #5. Instructions should be clear that 1) the figure in #5 should include the total credit amount from all 8609's issued for the BIN, and 2) when the 8823 is filed prior to issuance of form 8609, the number should be \$0, and not simply left blank. Correct.

Also, instructions should state that line 11c should be checked if a unit is uninhabitable due to casualty loss or other reason. Current instructions only include UPCS violations the state agency becomes aware of by inspection. Will consider adding to the instructions when the form is updated.

b. Item 3: "check if item 3 differs from Form 8609:" is this to be checked only if the Owner's name differs from the 8609, or is it also to be checked if Owners address has changed since the 8609 was filed? The box should only be checked if the owner's name differs from the Form 8609, so that when we research the building we can verify the owner's information. Presumably the address that you reflect on the Form 8823 is the updated and correct address for the owner, so that is not important to know if it is different than the 8609.

The instructions are not clear for income averaging. We are awaiting clarifying guidance from Treasury on this issue, but the Form 8823 is not scheduled for an update related to this issue.

the form refers to "unit" but there are times when the noncompliance is not on the physical side but only with the files. So how does one answer 7 c and 7 d? Since you are reviewing tenant files for specific units, 7c and 7d refer to the units that you are reviewing the tenant files for also and the non-compliance issue that you identify will distinguish if the tenant file review, or physical inspection led to the non-compliance issue.

TCAC would like clarification on the following two items: (1) Does the Housing Agency need to fill in Line 6 on Form 8823 or leave it blank if the project is a single building project? Leave it blank if the project is a single building project.

(2) When one word is omitted in the Attachment to Form 8823 where the actual Forms are completed correctly, does the IRS want the Housing Agency to amend the entire filing or just correct the wording in the Attachment? You can submit the attachment with the new wording and ask the LIHC unit to associate it with the Form 8823 that was submitted correctly. They should just associate the updated attachment to the previously filed Form 8823.

Q12 Are there any barriers to accurate reporting on Form 8823?

Also - to submit multiple forms for the same item when corrected immediately is duplicative. **Then you can submit one form showing both the out of compliance and back in compliance box checked along with the associated dates when the issue is immediately corrected.**

11f. Must be amended to include Income Average in the narrative. The Housing Agency needs direction and guidance on what to note on the Attachment to Form 8823 when a project is out of compliance with Income Averaging. At this time we have no guidance from IRS on how to report noncompliance in cases where the set-aside is not being met. **Form 8823 will not be updated to address average income test specifically. The non-compliance should be reported like the other minimum set aside non-compliance issues. We are awaiting clarifying guidance from Treasury, so there is a possibility that Form 8823 can be updated once that guidance is issued. However, for now if you have a violation of the minimum set aside you would report it to IRS under 11f. including average income non-compliance.**

Is a Form 8823 required when a LIHTC property is transferred to a new ownership entity during the 15-year compliance period and the new entity assumes the requirements in the LURA to maintain the building/project at a qualified low-income building/project? **Transferring a LIHTC property to a new ownership entity during the 15 year compliance period is considered a disposition and a Form 8823 must be filed. You should indicate, or provide the documentation to show that the new owner agreed to assume the requirements of the LURA to maintain the building/project as a qualified LIHTC building/project.**

Form 8823 states that the form should be submitted at any point that a building is disposed of (as well as when there is noncompliance). Chapter 24 of the 8823 Guide states "It is important to report all dispositions of low-income buildings that will not continue to be operated as a qualified low-income building after the disposition so that the IRS can determine that whether the tax payer has complied with the requirements of IRC Sect. 42(j), i.e. the credits have been appropriately recaptured." • But then then Example 1 on page 24-2 of the 8823 Guide under State Agency Responsibility for Reporting Property Dispositions seems to state that even though the new partnership intends to continue operating the building as LIHC building. Example 1: Owner Sells LIHC Building ABC, a limited partnership, owns and operates an LIHC building, and is identified as the owner on Form 8609. Mr. Jones is the general partner. There are two limited partners, Mr. Smith and the XYZ investment fund. On September 17, 2008, ABC sells the building to E&F, a limited partnership, which intends to continue operating the building as an LIHC building. As included in the extended use agreement, the state agency approved the sale. **If read in isolation, the dispositions must be reported when the Low-income building will not continue to be operated as a qualified low-income building after dispositions as stated. However, the instructions indicate that all dispositions should be reported on Form 8823, so I would default to the instructions. The paragraph you are referring to in the guide is talking about "recapture of the credit" and how it is important that all dispositions where the property will not continue as a Low-income building be reported to determine if there is a potential recapture. It appears to me that the paragraph is misleading because it is not talking about all dispositions which is the title of the chapter. Therefore, I would conclude that based on other instructions and my understanding of what should be reported, all dispositions should be reported. The guide needs to be reorganized and emphasis placed on reporting all dispositions, not just ones where the property will not continue as a low-income building.**

The state agency is required to report the disposition on Form 8823. Line 13a on Form 8823 identifies four categories of building dispositions.

1. SALE - Types of activities that would constitute a “sale” (which does not necessarily involve the seller receiving money) include:

a. Fee Title Sale of Building - Fee title passes from the seller to a whole new entity (buyer)

b. Termination of Partnership

2. Foreclosure

3. Destruction

4. Other

the reporting is that the 11a - q are pretty brief and all circumstances don't always fit. So I'm hoping that the IRS is reading the attached comments. Yes, we are reading the attached comments and will consider adding clarifying language as necessary when the 8823 form is updated. However, we cannot anticipate every possible circumstance and we rely on the State HFAs to use their judgement in reporting non-compliance, or use the “Other” option to report unusual circumstances that you deem important to report.

Q13 Do you have any suggestions for improving communication between IRS and the allocating agencies related to Form 8610, Form 8610 Schedule A, Form 8609, or Form 8823?

Yes - provide some training in form usage. Also - provide implementing guidance.

The current webinars are a start of the training. The Form 8823 ATG and IRC 42 ATG as well as form instructions should help. We are putting together some job aids for the form preparation that will be vetted through the ATG approval process that will likely help provide implementing guidance that is being asked for.

Also, regarding 8823 forms, many of the State agencies do not report on all levels of UPCS findings and some only report on uncorrected items. This can make it difficult for State Agencies who work with partners that work in multiple states. If the IRS could review their requirements and change to fit as they see needed or reinforce the fact that all states must report as required, it would make it easier on everyone involved.

Currently, State agencies are required to report all violations, no matter if they are corrected during the compliance period. We will be looking at certain guidance to identify ways to reduce reporting burden and implement more consistency.

Pertaining to Form 8823: Items 11a to 11p.....check only the "noncompliance corrected" box if the noncompliance was previously reported to the IRS on a separate Form 8823. Box 10 communicates the fact that correction was not reported. Would be better to check both boxes to better communicate what the issue was, and allows for better editing of form for correctness.

Item 10. Do not check this box unless the sole reason for filing the form is to indicate that previously reported noncompliance problems have been corrected. If that is the case then you would check the “Non-compliance corrected” boxes for the issues that were corrected, so it appears that is what is referred to in the question as suggesting to check both boxes.

Overall we feel that we have very good contact. However, we really miss the IRS newsletters. This was a great opportunity for IRS to provide timely instructions and information. Perhaps IRS could provide a quarterly eNews or newsletter to HFA's only (could even be via NCSHA so IRS doesn't need to maintain a distribution list?) for things they need HFA's to know, to answer FAQ's or solicit questions from HFA's, and to alert HFA's to newly published guidance. b. Direction will be needed soon as to how to report noncompliance at projects electing "Average Income" as the Minimum Set-Aside, with examples like those already provided in the 8823 Guide. The newsletter Grace Robertson used to send was extremely informative: it would be helpful to have such a newsletter again addressing issues and concerns the IRS has encountered. **The newsletter in the prior form will not be coming back due to staffing issues and concerns about setting precedent unintentionally. However, brief, vetted instructional communications are expected to be implemented going forward and NCSHA will be considered a partner in this communication process. The first step will be the upcoming webinars. Also, the Form 8823 guide will be updated during FY 19 and will include guidance on average income as a minimum set-aside once we have clarifying guidance from Treasury and Counsel.**

Yes, please keep us updated on who our state contact is for handling of forms and questions. **It will be George Lydford for the foreseeable future and all questions should be sent to sbse.lihc@irs.gov**

Create an IRS email subscription for updated IRS forms and instructions for Forms 8609, 8610, 8610 Schedule A, and 8823. IRS should not rely on NCSHA and other organizations to provide notifications of its updated LIHTC forms. **We will consider this request.**

Ensure the IRS employee replacing Grace/Milton attends NCSHA Conferences and writes quarterly newsletters which may contain Q&A, Rule reviews, and explain IRS interpretations. **Attendance at the NCSHA conferences will happen as time, resources, and budget permits. The other comments are addressed in the above response.**

Propose the IRS staff who attends the NCSHA Conference provide more direct information and guidance to state allocating agencies. **When attending that will be the goal.**

Develop and require the use of a reporting system for state allocating agency's to report the performance of Owners, General Partner/Managing Members, Management Companies, and other Project team members. This would require the need for a universal evaluation system ranking performance on a variety of issues such as ineligibility, uncorrected Form 8823s, out of compliance Form 8823s, etc. **It is not clear what the goal would be for this system of evaluation. Is it for the State Agencies to ensure poor performing stakeholders are not awarded future credits even if they apply in a different State? IRS has their own evaluation process to determine the most egregious taxpayers when it comes to non-compliance, but the resources available to work LIHTC cases is very limited.**

Provide a contact person at the IRS to field questions for state allocating agencies for unique compliance issues. **Send your questions to sbse.lihc@irs.gov**

Yes. I do not feel like I have any access to the IRS for questions. I would like to see a point of contact established for questions via a specific email address or website for communicating questions or concerns. **Send your questions to sbse.lihc@irs.gov**

Electronic filing and e signatures would be helpful. Please be specific as to what is required for documentation back up. We need to be able to send the backup securely, can the IRS receive encrypted electronic submissions? I agree this would benefit all parties. The possibilities for electronic submissions options are being explored, but there is currently no process in place to receive encrypted electronic submissions.

The form 8609 forces the allocating agency to show credits as a 'basis times fraction' calculation when the Code allows for two ways of calculating it ('basis times fraction' method and 'equity gap' method). The instructions to line 1(b) indicate to lower the rate or the basis, to get to the 'equity gap' credit number. Instead why not just add a line (between 1a and 1b) that is this number. As long as it is less than or equal to the 1b number, then the form will reflect the true credit rate, the true qualified basis, and which method was used for arriving at the credit amount. We will take this under consideration for the next form 8609 update.

As laws and regulations change, updates to the 8823 Guide or similar forms of guidance would be very helpful. True and we will be updating the 8823 Guide in FY 2019. However, due to limited resources and the vetting process required to update the Guide it will not be happening immediately when new law changes take place.

As far as the 8823 – under 11c. Violations of UPCS or local inspection standards - it would be a huge financial and time savings to only have to report the outstanding physical issues, not the issues that have already been corrected. It seems like resources could be better spent elsewhere. We will be discussing some options for requiring certain violations that are corrected within the correction period to not be reported, but currently there is no relief for this requirement. All noncompliance issues must be reported, even 11c violations of UPCS, or local standards that are corrected within the correction period.

more communication from the IRS side. The webinars will hopefully be the catalyst for more two way communications and open dialogue on how to solve unique issues that come up.

Yes, it would be nice to have a better communication system when HFA's have questions on the form that can be answered quickly. Sometimes, we will just call another HFA, when we really should be asking the IRS. Also it would be nice to know what happens to the 8823's that are open and not corrected and when the IRS would step in. Send your questions to sbse.lihc@irs.gov Due to disclosure laws and privacy act limitations, IRS cannot share what happens to the open 8823 forms that are not corrected.

We need a bit of clarification on income averaging. Clarifying guidance from Treasury will be forthcoming and shared as we receive it.