

OHIO HOUSING FINANCE AGENCY

57 East Main Street Columbus OH 43215

John R. Kasich, Governor, State of Ohio
Douglas A. Garver, Executive Director

To: Owners and Managers of Tax Credit Communities
From: Brian Carnahan, Director, Office of Program Compliance
Re: Revised IRS 8823 Guide
Date: April 7, 2011

Introduction

On March 25, the IRS issued a revised version of the 8823 Guide with a revision date of January 2011. The Guide is used by state housing finance agencies to report non-compliance in the Low Income Housing Tax Credit Program, but is generally viewed as the compliance handbook for the tax credit program.

The purpose of the 8823 Guide is to provide guidance to state housing finance agencies. By issuing this guidance, the IRS also provides guidance to owners and managers of tax credit communities. As the 8823 Guide clearly notes, it cannot be “used or cited as authority for setting or sustaining a technical position”. This caveat is important, as it instructs state agencies and the owners and managers of tax credit communities to rely upon the Internal Revenue Code for guidance. Based upon an interpretation of the Internal Revenue Code, OHFA may elect to establish policies and procedures that conflict with the 8823 Guide.

Overall, the revised 2011 Guide differs relatively little from the 2009 revised version. Additional examples have been added in Chapter 18, which covers utility allowances.

The Office of Program Compliance will implement the 8823 Guide as written, with some exceptions or different interpretations, as noted below. As the industry becomes more familiar with the revised 8823 Guide and the implications of some of the guidance, Program Compliance may elect to make changes in its policies and procedures.

The 8823 Guide can be downloaded at:

http://www.ohiohome.org/compliance/IRS/8823guide_01-11.pdf

Noteworthy Changes (Chapter/Page/Chapter Topic)

14/4/Over income households - clarified language regarding assets disposed of for less than fair market value.

7/1/Annual income certifications – Additional reference to the income recertification exemption available to 100% low income properties.

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18/8/Utility allowances – units to which an incorrect utility allowance was applied are back in compliance upon the use of the correct utility allowance, *unless* the incorrect allowance resulted in a violation of the maximum rent limit. If the maximum rent limit is violated, the unit remains out of compliance for the entire tax year.

OHFA Policy: OHFA will report to the IRS the use of incorrect utility allowances. Please review the 8823 Guide and OHFA's utility allowance policy (<http://www.ohiohome.org/compliance/utilityallowance.aspx>). In addition, any violations of the gross rent limit will be reported to the IRS.

18/9-10/Utility allowances – language regarding violations of the gross rent are included. Additional examples of non-compliance are provided.

18/11-12/Utility allowances – significant discussion of possible utility allowance issues, for example insufficient utility allowance documentation, failure to apply a utility allowance, etc.

