

Note: *The draft you are looking for begins on the next page.*



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Almost every form and publication also has a page on IRS.gov with a friendly shortcut. For example, the Form 1040 page is at [IRS.gov/Form1040](https://www.irs.gov/Form1040); the Pub. 501 page is at [IRS.gov/Pub501](https://www.irs.gov/Pub501); the Form W-4 page is at [IRS.gov/W4](https://www.irs.gov/W4); and the Schedule A (Form 1040) page is at [IRS.gov/ScheduleA](https://www.irs.gov/ScheduleA). If typing in a link above instead of clicking on it, be sure to type the link into the address bar of your browser, not a Search box.

If you wish, you can submit comments about draft or final forms, instructions, or publications at [IRS.gov/FormsComments](https://www.irs.gov/FormsComments). We cannot respond to all comments due to the high volume we receive. Please note that we may not be able to consider many suggestions until the subsequent revision of the product.

Low-Income Housing Credit Agencies
Report of Noncompliance or Building Disposition

▶ **File a separate Form 8823 for each building that is disposed of or goes out of compliance.**
 ▶ **Go to www.irs.gov/Form8823 for the latest information.**

Check here if this is an amended return ▶

<p>1 Building name (if any). Check if line 1 differs from Form 8609 ▶ <input type="checkbox"/></p> <p>Street address _____</p> <p>City or town, state, and ZIP code _____</p> <p>2 Building identification number (BIN) _____</p> <p>3 Owner's name. Check if line 3 differs from Form 8609 . . . ▶ <input type="checkbox"/></p> <p>Street address _____</p> <p>City or town, state, and ZIP code _____</p> <p>4 Owner's taxpayer identification number</p> <p style="text-align: right;"><input type="checkbox"/> EIN <input type="checkbox"/> SSN</p>	<p>IRS Use Only</p> <p style="font-size: 48pt; opacity: 0.5;">DRAFT AS OF October 16, 2019</p>
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5 Total credit allocated to this BIN ▶ \$ _____

6 If this building is part of a multiple building project, enter the number of buildings in the project ▶ _____

7a Total number of residential units in this building ▶ _____

b Total number of low-income units in this building ▶ _____

c Total number of residential units in this building determined to have noncompliance issues (see instructions) ▶ _____

d Total number of units reviewed by agency (see instructions) ▶ _____

8 Date building ceased to comply with the low-income housing credit provisions (see instructions) (MMDDYYYY) _____

9 Date noncompliance corrected (if applicable) (see instructions) (MMDDYYYY) _____

10 Check this box if you are filing only to show correction of a previously reported noncompliance problem . . . ▶

	Out of compliance	Noncompliance corrected
11 Check the box(es) that applies:		
a Household income above income limit upon initial occupancy	<input type="checkbox"/>	<input type="checkbox"/>
b Owner failed to correctly complete or document tenant's annual income recertification	<input type="checkbox"/>	<input type="checkbox"/>
c Violation(s) of the UPCS or local inspection standards including casualty losses (see instructions) (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>
d Owner failed to provide annual certifications or provided incomplete or inaccurate certifications	<input type="checkbox"/>	<input type="checkbox"/>
e Changes in Eligible Basis or the Applicable Percentage (see instructions)	<input type="checkbox"/>	<input type="checkbox"/>
f Project failed to meet minimum set-aside requirement (20/50, 40/60, average income test) (see instructions)	<input type="checkbox"/>	<input type="checkbox"/>
g Gross rent(s) exceeds limits	<input type="checkbox"/>	<input type="checkbox"/>
h Project not available to the general public (see instructions) (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>
i Violation(s) of the Available Unit Rule under section 42(g)(2)(D)(ii)	<input type="checkbox"/>	<input type="checkbox"/>
j Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(ix)	<input type="checkbox"/>	<input type="checkbox"/>
k Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J)	<input type="checkbox"/>	<input type="checkbox"/>
l Low-income units occupied by nonqualified full-time students	<input type="checkbox"/>	<input type="checkbox"/>
m Owner did not properly calculate utility allowance	<input type="checkbox"/>	<input type="checkbox"/>
n Owner has failed to respond to agency requests for monitoring reviews	<input type="checkbox"/>	<input type="checkbox"/>
o Low-income units used on a transient basis (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>
p Building is no longer in compliance nor participating in the section 42 program. (Attach explanation.)	<input type="checkbox"/>	<input type="checkbox"/>
q Other noncompliance issues (attach explanation)	<input type="checkbox"/>	<input type="checkbox"/>

12 Additional information for any line above. Attach explanation and check box ▶

13a Building disposition by Sale Foreclosure Destruction Other (attach explanation)

b Date of disposition (MMDDYYYY) _____

<p>c New owner's name</p> <p>Street address _____</p> <p>City or town, state, and ZIP code _____</p>	<p>d New owner's taxpayer identification number</p> <p style="text-align: right;"><input type="checkbox"/> EIN <input type="checkbox"/> SSN</p> <p>14 Name of contact person _____</p> <p>15 Telephone number of contact person _____</p> <p style="text-align: right;">Ext. _____</p>
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Under penalties of perjury, I declare that I have examined this report, including accompanying statements and schedules, and, to the best of my knowledge and belief, it is true, correct, and complete.

Signature of authorizing official _____ Print name and title _____ Date (MMDDYYYY) _____

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form 8823 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/Form8823.

Purpose of Form

Housing credit agencies use Form 8823 as part of their compliance monitoring responsibilities under section 42(m)(1)(B)(iii) to notify the IRS of any building disposition or noncompliance with the low-income housing tax credit provisions.

The housing credit agency should also give a copy of Form 8823 to the owner(s).

Who Must File

Any authorized housing credit agency that becomes aware that a low-income housing building was disposed of or is not in compliance with the provisions of section 42 must file Form 8823.

When To File

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).

Where To File

File Form 8823 with the:

Department of the Treasury
Internal Revenue Service Center
Philadelphia, PA 19255-0549

Specific Instructions

Amended return. If you are filing an amended return to correct previously reported information, check the box at the top of page 1.

Line 2. Enter the building identification number (BIN) assigned to the building by the housing credit agency as shown on Form 8609.

Lines 3, 4, 13c, and 13d. If there is more than one owner (other than as a member of a pass-through entity), attach a schedule listing the owners, their addresses, and their taxpayer identification numbers. Indicate whether each owner's taxpayer identification number is an employer identification number (EIN) or a social security number (SSN).

Both the EIN and the SSN have nine digits. An EIN has two digits, a hyphen, and seven digits. An SSN has three digits, a hyphen, two digits, a hyphen, and four digits, and is issued only to individuals.

Line 7d. "Reviewed by agency" includes physical inspection of the property, tenant file inspection, or review of documentation submitted by the owner. Regulations section 1.42-5(c)(2)(iii)(B) provides that a housing credit agency must conduct on-site inspections and low-income certification review of not fewer than the minimum number of low-income units set forth in the table found in Regulations section 1.42-5(c)(2)(iii).

Note: If the only noncompliance issue identified by the physical inspection of the property on line 11c relates to

a common area, then the number of units identified on line 7c should be -0-.

Line 8. Enter the date that the building ceased to comply with the low-income housing credit provisions. If there are multiple noncompliance issues, enter the date for the earliest discovered issue. **Do not** complete line 8 for a building disposition. Instead, skip lines 9 through 12, and complete line 13.

Line 9. Enter the date that the noncompliance issue was corrected. If there are multiple issues, enter the date the last correction was made.

Line 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.

Lines 11a through 11p. Check only the "Out of compliance" box if the issue causing the noncompliance remains uncorrected at the end of the correction period. Check both the "Out of compliance" and "Noncompliance corrected" boxes if the noncompliance was corrected within the correction period. Check only the "Noncompliance corrected" box if the noncompliance was previously reported to the IRS on a separate Form 8823.

Line 11c. Housing credit agencies must use either (a) the local health, safety, and building codes (or other habitability standards); or (b) the Uniform Physical Condition Standards (UPCS) (24 C.F.R. section 5.703) to inspect the project, but not in combination. The UPCS does not supersede or preempt local codes. Thus, if a housing credit agency using the UPCS becomes aware of any violation of local codes, the agency must report the violation. Attach a statement describing either (a) the deficiency and its severity under the UPCS (that is, minor (level 1), major (level 2), and severe (level 3)); or (b) the health, safety, or building violation under the local codes. The Department of Housing and Urban Development's Real Estate Assessment Center has developed a comprehensive description of the types and severities of deficiencies entitled "Revised Dictionary of Deficiency Definitions" found at www.hud.gov. 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. Physical damage to low-income housing credit projects caused by casualty events and that render residential rental units or buildings, or common areas associated with the property, unsuitable for occupancy is reported as noncompliance with the UPCS or local standards. While no credit is allowable during the time the property is being restored by reconstruction or replacement, section 42(j)(4)(E) provides relief from the credit recapture provisions; that is, the recapture provisions are not applied when there is a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period.

Line 11d. Report the failure to provide annual certifications or the provision of certifications that are known to be incomplete or inaccurate as required by Regulations section 1.42-5(c). As examples, report a failure by the owner to include a statement summarizing violations (or copies of the violation reports) of local health, safety, or building codes; report an owner who provided inaccurate or incomplete statements concerning corrections of these violations.

Line 11e. For buildings placed in service after July 30, 2008, report any federal grant used to finance any costs that were included in the eligible basis of any building. Report changes in common areas when they become commercial, when fees are charged for facilities, etc. For buildings placed in service after July 30, 2008, report any obligation the interest on which is exempt from tax under section 103 that is or was used (directly or indirectly) with respect to the building or its operation during the compliance period and that was not taken into account when determining eligible basis at the close of the first year of the credit period.

Line 11f. Failure to satisfy the minimum set-aside requirement for the first year of the credit period results in the permanent loss of the entire credit.

Failure to maintain the minimum set-aside requirement for any year after the first year of the credit period results in recapture of previously claimed credit and no allowable credit for that tax year. No low-income housing credit is allowable until the minimum set-aside is restored for a subsequent tax year.

In 2018, Congress revised section 42(g) to add a third minimum set-aside: the average income test. See section 42(g)(1)(C) for more information about the requirements of the average income test.

Line 11h. All units in the building must be for use by the general public (as defined in Regulations section 1.42-9 and further clarified in section 42(g)(9)), including the requirement that no finding of discrimination under the Fair Housing Act occurred for the building. Low-income housing credit properties are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act. The Act prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. See 42 U.S.C.A. sections 3601 through 3619.

It also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities. The failure of low-income housing credit properties to comply with the requirements of the Fair Housing Act will result in the loss of the low-income housing credit.

Individuals with questions about the accessibility requirements can obtain the Fair Housing Act Design Manual through www.huduser.org.

Line 11i. The owner must rent to low-income tenants all comparable units that are available or that subsequently become available in the same building in order to continue treating the over-income unit(s) as a low-income unit. All units affected by a violation of the available unit rule may not be included in qualified basis. When the percentage of low-income units in a building again equals the percentage of low-income units on which the credit is based, the full availability of the credit is restored. Thus, only check the "Noncompliance corrected" box when the percentage of low-income units in the building equals the percentage on which the credit is based.

Line 11k. Section 42(h)(6) requires owners of low-income housing credit properties to enter into an extended use agreement with the state agency that allocated the

credits to the project. Building owners must agree to a long-term commitment beginning on the first day of the 15-year compliance period and ending on the later of (1) the date specified by the state agency in the agreement, or (2) the date that is 15 years after the close of the 15-year compliance period.

The extended use agreement must (1) specify that the applicable fraction for the building for each year in the extended use period will not be less than the applicable fraction specified in the extended use agreement and prohibit the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under section 42, (2) allow individuals (whether prospective, present, or former occupants) who meet the income limitations applicable to the building under section 42(g) the right to enforce in state court the requirements and prohibitions under section 42(h)(6)(B)(i) throughout the extended use period, (3) prohibit the disposition to any person of any portion of the building unless all of the building is disposed of to that person, (4) prohibit the refusal to lease to section 8 voucher holders because of the status of the prospective tenant as such a holder, and (5) provide that the agreement is binding on all successors of the taxpayer. The extended use agreement must be recorded as a restrictive covenant with respect to the property under state law.

Noncompliance should be reported if an extended use agreement is not executed and recorded as a restrictive covenant with respect to the property under state law or the owner failed to correct the noncompliance within the 1-year correction period provided by section 42(h)(6)(J). The 1-year correction period begins when the agency notifies the owner in writing that an extended use agreement is not recorded as a restrictive covenant with respect to the property under state law. A copy of the notification letter should be included as an attachment to Form 8823 when filed with the IRS.

Line 11q. Check this box for noncompliance events other than those listed on lines 11a through 11p. Attach an explanation. For projects with allocations from the nonprofit set-aside under section 42(h)(5), report the lack of material participation by a non-profit organization (that is, regular, continuous, and substantial involvement) that the housing credit agency learns of during the compliance period.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	11 hr., 43 min.
Learning about the law or the form	1 hr., 35 min.
Preparing and sending the form to the IRS	1 hr., 51 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can send your comments to www.irs.gov/FormComments. Or you can write to the Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send the form to this address. Instead, see *Where To File*, earlier.

DRAFT AS OF
October 16, 2019
DO NOT FILE