

McKonly & Asbury's Fall Affordable Housing Seminar Agenda

11.5.26

Program Oversight and the Cost of Noncompliance

- Recapture: the statutory recapture amount, the accelerated one-third, and interest from original return due dates; recapture rates by compliance year; reporting on Form 8611
- IRS versus state HFA authority; the four circumstances in which credits return to the HFA; the 180-day reclaim window
- Audit selection: uncorrected Forms 8823 as the principal driver; the IRS letter of noncompliance
- Extended Use Agreements: 30-year minimum; the seven required elements; early termination by foreclosure or the qualified contract process; commitments made for competitive points

Calculating the Credit and Meeting Critical Deadlines

- The four-component calculation: eligible basis, applicable fraction (lesser of unit and floor-space fractions, four decimal places), qualified basis, applicable percentage
- Worked example: annual credit and ten-year credit stream
- First-year credit on average monthly occupancy under §42(f)(2) and the year-11 catch-up
- Deadlines that eliminate credits: two-year placed-in-service rule, 10% test, minimum set-aside deadline; "2/3 units" under §42(f)(3)
- Minimum set-aside elections (20/50, 40/60, Average Income) and operating an Average Income property

Acquisition/Rehabilitation and Resyndication — Critical Requirements for Success

- Two placed-in-service definitions: the existing building and the rehabilitation expenditures (24-month aggregation period)
- Acquisition basis earns only the 4% credit; rehabilitation may reach 9% absent tax-exempt bonds
- Minimum expenditure test: greater of 20% of depreciable cost or \$8,700 per low-income unit for 2026; state thresholds that exceed the federal floor
- Tenant and unit qualification: the 120-day certification window and the three certification-timing scenarios
- The safe-harbor income test within 120 days before the first credit year; 140% trigger for the Available Unit Rule
- First-year credit delivery and the applicable fraction on acq/rehab deals; transfers between BINs; Section 8 displacement prohibition; relocation cost treatment
- Resyndication: reliance on prior tenant eligibility documentation, the surviving prior EUA, new income limits tied to the new placed-in-service date, and pre-closing due diligence

Purpose, Line-by-Line Walkthrough, and Part II Elections

- Purpose and significance: no properly completed Form 8609, no credit; one form per BIN, and separate forms for acquisition and rehabilitation credits
- What is a “project”: single-building default and the Line 8b multiple-building election and attachment requirements; project-level set-aside testing
- Header items A–E and Part I (agency allocation): Lines 1a–6, including maximum credit, applicable percentage, maximum qualified basis, the DDA/QCT 30% boost, bond-financing percentage, and placed-in-service date
- Part II (owner’s first-year certification): Line 7 eligible basis, Line 8a original qualified basis, Line 8b, Lines 9a–9b, and Lines 10a–10d (deferral, large partnership, minimum set-aside, deep rent skewing)
- Irrevocable elections and common filing errors; aligning acquisition and rehab 8609s to the same credit schedule; relationship to Form 8609-A

Form 8823, Casualty Loss, and the Other Core Forms

- Major reportable noncompliance categories; corrected versus uncorrected reporting; ownership-change reporting
- Casualty loss relief, restoration periods, federally declared disaster areas, and same-year casualty and restoration
- No monthly disallowance outside the first credit year
- Who files what and when: Forms 8609, 8609-A, 8586, 8610 and Schedule A, 8611, and 8823