

grouping. The statement reporting a disposition of a specific activity within an existing grouping must contain a declaration that the remaining activities (if more than one) within the existing grouping constitute an appropriate economic unit for the measurement of gain or loss for purposes of § 469. Except as otherwise provided in § 1.469-4(g) (providing for the treatment of partial dispositions where there is a disposition of substantially all of an activity), the rules provided for in § 469(g) will not apply to the disposition of a specific activity from an existing grouping. For example, assume A, an individual, owns and operates four bakeries which A has treated as one activity under § 1.469-4. If, within a taxable year, A sells A's entire interest in one of those bakeries, the rules provided for in § 469(g) will generally not apply to the sale, and any losses or credits attributable to the disposed of bakery will be treated as a deduction or credit allocable to the continuing bakery activity. If a taxpayer believes § 1.469-4(g) applies to the disposition of a specific activity within an existing grouping, the statement reporting the disposition must contain a declaration that the disposition satisfies the requirements of § 1.469-4(g).

D. Statement Required for Regroupings

The proposal provides that, under § 1.469-4(e)(2), if it is determined that the taxpayer's original grouping was clearly inappropriate or a material change in the facts and circumstances has occurred that makes the original grouping clearly inappropriate, the taxpayer must regroup the activities. If such a determination and regrouping is made, the taxpayer shall file a written statement with the taxpayer's original return for the taxable year in which the trade or business activities or rental activities are regrouped. This statement must identify the names, addresses, and employer identification numbers, if applicable, for the trade or business or rental activities that are being regrouped. If two or more activities are regrouped into a single activity, the statement reporting a regrouping must also contain a declaration that the regrouped activities constitute an appropriate economic unit for the measurement of gain or loss for purposes of § 469. Furthermore, the statement reporting a regrouping must contain

an explanation of why the taxpayer's original grouping was determined to be clearly inappropriate or the nature of the material change in the facts and circumstances that makes the original grouping clearly inappropriate.

E. Reporting of Pre-Existing Groupings Required only upon Change

The proposal clarifies that no written statement is required to be filed reporting the grouping of the trade or business activities and rental activities that have been made as of the effective date of any published final guidance until the taxpayer makes a change to the grouping as described in paragraphs A, B, C, or D of this notice.

F. Effect of Failure to Report

Under the proposal, except as provided in § 1.469-4(d)(5), if a taxpayer is engaged in two or more trade or business activities or rental activities and fails to report whether the activities have been grouped as a single activity or as separate activities in accordance with this proposal, then each trade or business activity or rental activity will be treated as having been grouped as a separate activity for purposes of applying the passive activity loss and credit limitation rules of § 469.

EFFECTIVE DATE

The proposal would be effective on the date that final guidance is published by the Internal Revenue Service.

REQUEST FOR COMMENTS

The proposal contained in this notice is one way, but not the only way, to implement a reporting system for taxpayer groupings under section 469. The IRS requests public comments on this proposal and, specifically, whether it sufficiently balances the need for reporting with the burden of compliance. Comments regarding other possible approaches are also requested. All comments will be available for public inspection and copying. Therefore, submissions received by the IRS should not include taxpayer-specific information of a confidential nature. Submissions should include the name and telephone number of a person to contact. Comments must be submitted by

November 4, 2008. Comments should be addressed to:

Internal Revenue Service
Office of the Associate Chief Counsel
(Passthroughs and Special Industries),
CC:PSI
Attn: Jonathan Cornwell, Room 5004
1111 Constitution Avenue, NW
Washington, DC 20224

In addition, comments may be submitted electronically via the Internet by sending them in an email to notice.comments@irs.counsel.treas.gov and specifying that the comments concern Notice 2008-64.

DRAFTING INFORMATION

The principal author of this notice is Jonathan E. Cornwell of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Mr. Cornwell at (202) 622-3050 (not a toll-free call).

Relief From Certain Low-Income Housing Credit Requirements Due to Severe Storms and Flooding in Missouri

Notice 2008-66

The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects in the United States to provide emergency housing relief needed as a result of the devastation caused by severe storms and flooding in Missouri beginning on June 1, 2008. This relief is being granted pursuant to the Service's authority under § 42(n) and § 1.42-13(a) of the Income Tax Regulations.

BACKGROUND

On June 25, 2008, the President declared a major disaster for the State of Missouri. This declaration was made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (2000 and Supp. II 2002). Subsequently, the Federal Emergency Management Agency (FEMA) designated

jurisdictions for Individual Assistance. The State of Missouri has requested that the Service allow owners of low-income housing credit projects to provide temporary housing in vacant units to individuals who resided in jurisdictions designated for Individual Assistance in Missouri and who have been displaced because their residences were destroyed or damaged as a result of the devastation caused by the severe storms and flooding. Based upon this request and because of the widespread damage to housing caused by the severe storms and flooding, the Service has determined that the Missouri Housing Development Commission (Commission) may provide approval to project owners to provide temporary emergency housing for displaced individuals in accordance with this notice.

I. SUSPENSION OF INCOME LIMITATIONS

The Service has determined that it is appropriate to temporarily suspend certain income limitation requirements under § 42 for certain qualified low-income projects. The suspension will apply to low-income housing projects approved by the Commission, in which vacant units are rented to displaced individuals. The Commission will determine the appropriate period of temporary housing for each project, not to extend beyond July 31, 2009 (temporary housing period).

II. STATUS OF UNITS

A. Units in the first year of the credit period

A displaced individual temporarily occupying a unit during the first year of the credit period under § 42(f)(1) will be deemed a qualified low-income tenant for purposes of determining the project's qualified basis under § 42(c)(1), and for meeting the project's 20–50 test or 40–60 test as elected by the project owner under § 42(g)(1). After the end of the temporary housing period established by the Commission (not to extend beyond July 31, 2009), a displaced individual will no longer be deemed a qualified low-income tenant.

B. Vacant units after the first year of the credit period

During the temporary housing period established by the Commission, the status

of a vacant unit (that is, market-rate or low-income for purposes of § 42 or never previously occupied) after the first year of the credit period that becomes temporarily occupied by a displaced individual remains the same as the unit's status before the displaced individual moves in. Displaced individuals temporarily occupying vacant units will not be treated as low-income tenants under § 42(i)(3)(A)(ii). However, even if it houses a displaced individual, a low-income or market rate unit that was vacant before the effective date of this notice will continue to be treated as a vacant low-income or market rate unit. Similarly, a unit that was never previously occupied before the effective date of this notice will continue to be treated as a unit that has never been previously occupied even if it houses a displaced individual. Thus, the fact that a vacant unit becomes occupied by a displaced individual will not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis, nor will it affect the 20–50 test or 40–60 test of § 42(g)(1). If the income of occupants in low-income units exceeds 140 percent of the applicable income limitation, the temporary occupancy of a unit by a displaced individual will not cause application of the available unit rule under § 42(g)(2)(D)(ii). In addition, the project owner is not required during the temporary housing period to make attempts to rent to low-income individuals the low-income units that house displaced individuals.

III. SUSPENSION OF NON-TRANSIENT REQUIREMENTS

The non-transient use requirement of § 42(i)(3)(B)(i) shall not apply to any unit providing temporary housing to a displaced individual during the temporary housing period determined by the Commission in accordance with section I of this notice.

IV. OTHER REQUIREMENTS

All other rules and requirements of § 42 will continue to apply during the temporary housing period established by the Commission. After the end of the temporary housing period, the applicable income limitations contained in § 42(g)(1), the available unit rule under § 42(g)(2)(D)(ii), the nontransient

requirement of § 42(i)(3)(B)(i), and the requirement to make reasonable attempts to rent vacant units to low-income individuals shall resume. If a project owner offers to rent a unit to a displaced individual after the end of the temporary housing period, the displaced individual must be certified under the requirements of § 42(i)(3)(A)(ii) and § 1.42–5(b) and (c) to be a qualified low-income tenant. To qualify for the relief in this notice, the project owner must additionally meet all of the following requirements:

(1) Major Disaster Area

The displaced individual must have resided in a Missouri jurisdiction designated for Individual Assistance by FEMA as a result of the severe storms and flooding in Missouri beginning on June 1, 2008.

(2) Approval of the Missouri Housing Development Commission

The project owner must obtain approval from the Commission for the relief described in this notice. The Commission will determine the appropriate period of temporary housing for each project, not to extend beyond July 31, 2009.

(3) Certifications and Recordkeeping

To comply with the requirements of § 1.42–5, project owners are required to maintain and certify certain information concerning each displaced individual temporarily housed in the project, specifically: name, address of damaged residence, social security number, and a statement signed under penalties of perjury by the displaced individual that, because of damage to the individual's residence in a Missouri jurisdiction designated for Individual Assistance by FEMA as a result of the severe storms and flooding beginning on June 1, 2008, the individual requires temporary housing. The owner must notify the Commission that vacant units are available for rent to displaced individuals.

The owner must also certify the date the displaced individual began temporary occupancy and the date the project will discontinue providing temporary housing as established by the Commission. The certifications and recordkeeping for displaced individuals must be maintained as part of the annual compliance monitoring process with the Commission.

(4) Rent Restrictions

Rents for the low-income units that house displaced individuals must not exceed the existing rent-restricted rates for

the low-income units established under § 42(g)(2).

(5) Protection of Existing Tenants

Existing tenants in occupied low-income units cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.

EFFECTIVE DATE

This notice is effective June 25, 2008 (the date of the President's major disaster declarations as a result of the severe storms and flooding in Missouri beginning on June 1, 2008).

PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2108.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this notice is in the section titled "OTHER REQUIREMENTS" under "(3) Certifications and Recordkeeping." This information is required to enable the Service to verify whether individuals are displaced as a result of the devastation caused by severe storms and flooding in Missouri beginning on June 1, 2008, and thus warrant temporary housing in vacant low-income housing credit units. The collection of information is required to obtain a benefit. The likely respondents are individuals and businesses.

The estimated total annual recordkeeping burden is 125 hours.

The estimated annual burden per recordkeeper is approximately 15 minutes. The estimated number of recordkeepers is 500.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this notice is David Selig of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Selig at (202) 622-3040 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, §§ 860D, 860G, 1001; 1.860G-2, 1.1001-3, 301.7701-2, 301.7701-3, 301.7701-4.)

Rev. Proc. 2008-47

SECTION 1. PURPOSE

This revenue procedure describes the conditions under which modifications to certain subprime mortgage loans will not cause the Internal Revenue Service (Service) to challenge the tax status of certain securitization vehicles that hold the loans or to assert that those modifications create a liability for tax on a prohibited transaction.

The purpose of this revenue procedure is to provide certainty in the current economic environment with respect to certain potential tax issues that may be implicated by fast track loan modifications, as described below. No inference should be drawn about whether similar consequences would obtain if a transaction falls outside the limited scope of this revenue procedure. Furthermore, there should be no inference that, in the absence of this revenue procedure, transactions within its scope would have impaired the tax status of securitization vehicles or would have created liability for tax on a prohibited transaction.

Rev. Proc. 2007-72, 2007-52 I.R.B. 1257, provided similar guidance regarding fast-track loan modifications that were effected in a manner consistent with certain principles, recommendations, and guidelines (the "Original Framework"), which the American Securitization Forum ("ASF") released on December 6, 2007. In July 2008, the ASF released an updated Framework, which covers additional fast-track loan modifications.

This revenue procedure amplifies and supersedes Rev. Proc. 2007-72 by extend-

ing its provisions to these additional loan modifications.

SECTION 2. BACKGROUND—THE ASF "JULY 2008 FRAMEWORK"

.01 On July 8, 2008, the American Securitization Forum ("ASF") released a document entitled, "Statement of Principles, Recommendations and Guidelines for a Streamlined Foreclosure and Loss Avoidance Framework for Securitized Subprime Adjustable Rate Mortgage Loans" (the "July 2008 Framework"). An Executive Summary of the July 2008 Framework (entitled "Streamlined Foreclosure and Loss Avoidance Framework for Securitized Subprime Adjustable Rate Mortgage Loans") was released simultaneously and is attached as an Appendix to this revenue procedure.

.02 Both the Original Framework and the July 2008 Framework have been broadly supported as appropriate steps in addressing certain risks in the current economic environment.

.03 The July 2008 Framework applies to first-lien subprime residential adjustable rate mortgage (ARM) loans that—

(1) Have an initial fixed rate period of 36 months or less (including "2/28s" and "3/27s");

(2) Were originated between January 1, 2005, and July 31, 2007;

(3) Are included in securitized pools; and

(4) Have an initial interest rate reset date between January 1, 2008, and July 31, 2010.

This revenue procedure refers to these instruments as "Loans."

.04 The July 2008 Framework provides a "fast track" procedure for modifying Loans in advance of an initial, or any subsequent, interest rate reset date and details the criteria for determining which Loans are eligible for the procedure. Modifications pursuant to the procedure are referred to as "fast track modifications."

.05 A fast track modification affects the interest rate on the Loan, generally for five years following the date on which the rate would have reset in the absence of the modification. During the period affected by the modification, the interest rate on the modified Loan is generally fixed at the rate in effect prior to the upcoming reset date.