

Part III. Administrative, Procedural, and Miscellaneous

Iowa Low-Income Housing Credit Disaster Relief

Notice 2012-7

The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects to provide emergency housing relief needed as a result of the devastation in Iowa caused by flooding during the period of May 25, 2011, to August 1, 2011. 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 27, 2011, the President declared a major disaster for the State of Iowa. This declaration was made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* On October 18, 2011, the Federal Emergency Management Agency (FEMA) designated jurisdictions for Individual Assistance resulting from the flooding during the period of May 25, 2011, to August 1, 2011. The State of Iowa 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 Iowa and who have been displaced because their residences were destroyed or damaged as a result of the devastation caused by the flooding. Based upon this request and because of the widespread damage to housing caused by the flooding, the Service has determined that the Iowa Finance Authority (Authority) 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 housing projects. The suspension will apply to

low-income housing projects approved by the Authority, in which vacant units are rented to displaced individuals. The Authority will determine the appropriate period of temporary housing for each project, not to extend beyond December 31, 2012 (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 Authority (not to extend beyond December 31, 2012), 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 Authority, 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 Authority 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 Authority. 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 an Iowa jurisdiction designated for Individual Assistance by FEMA as a result of the devastation in Iowa caused by flooding during the period of May 25, 2011, to August 1, 2011.

(2) Approval of the Authority

The project owner must obtain approval from the Authority for the relief described in this notice. The Authority will determine the appropriate period of temporary housing for each project, not to extend beyond December 31, 2012.

(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 the following: 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 an Iowa jurisdiction designated for Individual Assistance by FEMA as a result of the devastation caused in Iowa caused by flooding during the period of May 25, 2011, to August 1, 2011, the individual requires temporary housing. The owner must notify the Authority 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 Authority. The certifications and recordkeeping for displaced individuals must be maintained as part of the annual compliance monitoring process with the Authority.

(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 DATES

This notice is effective June 27, 2011 (the date of the President's major disas-

ter declaration for devastation caused by flooding during the period of May 25, 2011, to August 1, 2011).

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 1545–2223.

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 in Iowa caused by flooding during the period of May 25, 2011, to August 1, 2011, and thus warrant temporary housing in vacant low-income housing 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 Associate Chief Counsel (Passthroughs & 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 liability.

(Also: Part I, sections 66, 6015.)

Notice 2012–8

This notice provides a proposed revenue procedure that would update Rev. Proc. 2003–61, 2003–2 C.B. 296, which provides guidance regarding equitable relief from income tax liability under section 66(c) and section 6015(f) of the Internal Revenue Code. Since the issuance of Rev. Proc. 2003–61 in August 2003, the Internal Revenue Service's experience in working section 6015(f) equitable relief cases has grown significantly. This proposed update to Rev. Proc. 2003–61 addresses the criteria used in making innocent spouse relief determinations for section 6015(f) equitable relief cases and revises the factors for granting equitable relief. The factors have been revised to ensure that requests for innocent spouse relief are granted under section 6015(f) when the facts and circumstances warrant and that, when appropriate, requests are granted in the initial stage of the administrative process.

Significantly, this proposed revenue procedure expands how the IRS will take into account abuse and financial control by the nonrequesting spouse in determining whether equitable relief is warranted. Review of the innocent spouse program demonstrated that when a requesting spouse has been abused by the nonrequesting spouse, the requesting spouse may not have been able to challenge the treatment of any items on the joint return, question the payment of the taxes reported as due on the joint return, or challenge the nonrequesting spouse's assurance regarding the payment of the taxes. Review of the program also highlighted that lack of financial control may have a similar impact on the requesting spouse's ability to satisfy joint tax liabilities. As a result, this proposed revenue procedure provides that abuse or lack of financial control may mitigate other factors that might otherwise weigh against granting equitable relief under section 6015(f).

The proposed revenue procedure also provides for certain streamlined case determinations; new guidance on the potential impact of economic hardship; and the weight to be accorded to certain factual