

Part III - Administrative, Procedural, and Miscellaneous

Low-Income Housing Credit Disaster Relief for Hurricane Sandy

Notice 2012-68

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 caused by Hurricane Sandy and associated storms (hereafter Hurricane Sandy). 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

The President issued major disaster declarations for several states because of the devastation caused by Hurricane Sandy. The President issued the declarations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* Subsequently, the Federal Emergency Management Agency (FEMA) designated jurisdictions in several states for Individual Assistance. Because of the widespread damage to housing caused by Hurricane Sandy, the Service has determined that state housing agencies (Agencies) may provide approval to project

owners in their respective states to provide temporary emergency housing for displaced individuals in accordance with this notice. For purposes of this notice, the term “displaced individual” means an individual who resided in a jurisdiction designated for Individual Assistance and who has been displaced because his or her residence was destroyed or damaged as a result of the devastation caused by Hurricane Sandy. The Service has also determined that the projects to which this approval may be given may be located in any state, regardless of whether a major disaster declaration with Individual Assistance has been issued for that state.

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 which are approved by the Agency with jurisdiction over the project (the applicable Agency) and in which vacant units are rented to displaced individuals. The applicable Agency will determine the appropriate period of temporary housing for each project, not to extend beyond November 30, 2013 (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 applicable Agency, 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 applicable Agency, 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 applicable Agency.

IV. OTHER REQUIREMENTS

All other rules and requirements of § 42 will continue to apply during the temporary housing period established by the applicable Agency. 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

In the case of an individual displaced by the devastation caused by Hurricane Sandy, the displaced individual must have resided in a jurisdiction designated for Individual Assistance by FEMA as a result of the devastation caused by Hurricane Sandy.

(2) Agency Approval

The project owner must obtain approval from the applicable Agency for the relief described in this notice. The applicable Agency will determine the appropriate period of temporary housing for each project, not to extend beyond November 30, 2013.

(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 a jurisdiction designated for Individual Assistance by FEMA as a result of the devastation caused by Hurricane Sandy, the individual requires temporary housing. The owner must notify the applicable Agency 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 applicable Agency. The certifications and recordkeeping for displaced individuals must be maintained as part of the annual compliance monitoring process with the Agency.

(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 October 22, 2012.

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 1545-2237.

A Federal 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 Hurricane Sandy 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 1750 hours.

The estimated annual burden per recordkeeper is approximately 30 minutes. The estimated number of recordkeepers is 3500.

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).