

Low-Income Housing Credit Disaster Relief for the Commonwealth of Puerto Rico

Notice 2018-17

I. PURPOSE

In response to the devastation caused by Hurricane Maria to the Commonwealth of Puerto Rico (hereinafter, Puerto Rico), this notice expands the relief that is provided in Rev. Proc. 2014-49, 2014-37 I.R.B. 535, and Rev. Proc. 2014-50, 2014-37 I.R.B. 540. The expanded relief in this notice is limited to the Hurricane Maria PR Major Disaster, as defined below. Except as expressly provided in this notice, all provisions of Rev. Procs. 2014-49 and 2014-50 apply to the Hurricane Maria PR Major Disaster without modification.

This notice also solicits public comment regarding any desirable modifications to Rev. Procs. 2014-49 and 2014-50.

II. BACKGROUND

Rev. Procs. 2014-49 and 2014-50 provide temporary relief from certain requirements of §§ 42 and 142(d) of the Internal Revenue Code in the context of a major disaster.

Rev. Proc. 2014-49 provides guidance and relief to the owners of qualified low-income housing projects (each such project, a § 42 Project) and to Agencies (as defined in section 5.01 of Rev. Proc. 2014-49) that are responsible for those § 42 Projects.

Rev. Proc. 2014-50 provides guidance to issuers of exempt facility bonds financing qualified residential rental projects under § 142(d) (each such issuer, an Issuer; each such project, a § 142(d) Project) and to operators of those § 142(d) Projects. Various aspects of these revenue procedures apply with respect to § 42 Projects and § 142(d) Projects both inside and outside of the area in which the major disaster occurs.

Sections 12 through 14 of Rev. Proc. 2014-49 and sections 5 through 7 of Rev. Proc. 2014-50 facilitate emergency housing relief for Displaced Individuals (as defined in section 5.02 of Rev. Proc. 2014-49 and in section 4.02 of Rev. Proc. 2014-50). To achieve this end, these sections give owners of § 42 Projects and operators of § 142(d) Projects the option to apply certain modifications to the rules of §§ 42 and 142(d), provided that the relevant Agency or Issuer authorizes the owner or operator to do so. Among these modifications is the ability to disregard the actual income of a Displaced Individual housed in a § 42 Project or a § 142(d) Project, even if the Displaced Individual's income exceeds the limitations on income provided in §§ 42 or 142(d). The option to apply these modified rules is limited to a period defined in the revenue procedures as the Temporary Housing Period. See section 5.08 of Rev. Proc. 2014-49 and section 4.13 of Rev. Proc. 2014-50. The Temporary Housing Period begins on the first day of the incident period, as determined by the Federal Emergency Management Agency (FEMA), and ends on a date determined by the Agency or Issuer. Both

revenue procedures provide a date beyond which the Temporary Housing Period may not extend. See section 12.02(1) of Rev. Proc. 2014-49 and section 5.02(1) of Rev. Proc. 2014-50.

On September 20, 2017, the President of the United States issued major disaster and emergency declarations with respect to Hurricane Maria under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (the Stafford Act), and FEMA determined certain areas within Puerto Rico to be eligible for Public Assistance or Public Assistance and Individual Assistance under the Stafford Act (the Hurricane Maria PR Major Disaster). See 82 Fed. Reg. 46820 (2017). The incident period for the Hurricane Maria PR Major Disaster began on September 17, 2017, and closed on November 15, 2017. See 82 Fed. Reg. 61768 (2017).

Agencies must periodically review § 42 Projects for compliance with the affordability and habitability requirements of § 42. See §§ 42(m)(1)(B)(iii) and 142(d)(7); also see §§ 1.42-5 and 1.42-5T of the Income Tax Regulations. Under section 9 of Rev. Proc. 2014-49, an Agency may extend the due date for its scheduled compliance reviews for up to one calendar year from the date of a low-income building's restoration and placement again into service. That revenue procedure does not delay the compliance review due dates of buildings that do not require restoration and replacement into service.

Ordinarily, even though an owner has received a carryover allocation of housing credit dollar amount for a building, the benefit of that allocation may be lost if the owner does not timely meet certain progress benchmarks with respect to the building. First,

not later than the due date in § 42(h)(1)(E)(ii), the owner's basis in the § 42 Project containing the building must be more than 10 percent of the owner's reasonably expected eventual basis in the project. Second, the building must be placed in service not later than the due date in § 42(h)(1)(E)(i). However, in the case of certain buildings located in major disaster areas, sections 6 and 7 of Rev. Proc. 2014-49 authorize the Agency responsible for a building to extend these deadlines for limited periods.

III. EMERGENCY HOUSING RELIEF

Solely in connection with the Hurricane Maria PR Major Disaster, the second sentence of section 12.02(1) in Rev. Proc. 2014-49 and the second sentence of section 5.02(1) in Rev. Proc. 2014-50 are revised to read: "The Temporary Housing Period cannot extend beyond the end of May 2019."

IV. COMPLIANCE MONITORING RELIEF

Under this notice, the Puerto Rico Housing Finance Authority (PRHFA) may extend the date for its compliance review of low-income buildings located in Puerto Rico notwithstanding section 9 of Rev. Proc. 2014-49. For any such building, this extension may not last beyond one calendar year from the later of—

- November 15, 2017; or
- In the case of a building that has suffered a casualty loss due to Hurricane Maria or has been taken out of service due to that hurricane, the date of the building's restoration and placement again in service.

This extension of dates for compliance review by the PRHFA does not, however, extend the compliance monitoring deadlines for owners. If the PRHFA learns that an

owner or operator has failed to comply with the rules of § 42, as applicable, the noncompliance must be reported timely to the Internal Revenue Service (Service), along with a description of whether and how Hurricane Maria contributed to the noncompliance.

V. CARRYOVER ALLOCATION RELIEF

Notwithstanding the limitations in sections 6 and 7 of Rev. Proc. 2014-49, under this notice the PRHFA may grant extensions of the due date in § 42(h)(1)(E)(ii) (regarding basis) for up to 12 months after the later of—

- The due date prior to any extension; or
- November 15, 2017.

Similarly, the PRHFA may grant extensions of the due date in § 42(h)(1)(E)(i) (regarding placement into service) up to December 31 of the first calendar year following the calendar year containing the due date in § 42(h)(1)(E)(ii), taking into account any extension granted under the preceding paragraph.

Except for the ability to extend these two due dates for longer periods, all other procedures and limitations in sections 6 and 7 continue to apply to buildings affected by the Hurricane Maria PR Major Disaster. As is the case for extensions under those sections, if an owner satisfies an extended due date prescribed by the PRHFA under this notice, the Service will not assert that the owner fails to satisfy § 42(h)(1)(E)(i) or (ii), as applicable.

VI. REQUEST FOR COMMENTS REGARDING POSSIBLE IMPROVEMENTS TO REVENUE PROCEDURES 2014-49 AND 2014-50

The Department of the Treasury and the Service are considering whether to make any changes to Rev. Procs. 2014-49 and 2014-50, and, in that regard, request comments from the public regarding possible changes to the two revenue procedures.

Comments should be submitted by April 12, 2018. Comments may be mailed to:

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2018-17)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

or hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2018-17)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Alternatively, persons may submit comments electronically via e-mail to the following address:

Notice.Comments@irscounsel.treas.gov.

Persons should include "Notice 2018-17" in the subject line. All comments submitted by the public will be available for public inspection and copying in their entirety.

VII. DRAFTING INFORMATION

The principal author of this notice is James W. Rider of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Mr. Rider at (202) 317-4137 (not a toll-free call).