

Part III - Administrative, Procedural, and Miscellaneous

Temporary Shelter for Individuals Displaced by Hurricane Sandy

Notice 2013--9

The Internal Revenue Service is suspending certain requirements under § 142(d) of the Internal Revenue Code for qualified residential rental projects financed with exempt facility bonds under § 142 to provide emergency housing relief needed as a result of the devastation caused by Hurricane Sandy and associated storms (hereafter “Hurricane Sandy”).

This Notice provides relief for all qualified residential rental projects described herein. For those projects that are also low-income housing tax credit (“LIHTC”) projects, this Notice should be read with Notice 2012-68, 2012-48 I.R.B. 574, which suspends certain low-income and non-transient requirements under § 42 to allow low-income housing credit projects to provide emergency housing needed because of Hurricane Sandy.

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 of these States for Individual Assistance (as FEMA uses that term). Because of the widespread damage to housing caused by Hurricane Sandy, the Service has determined that issuers can approve the use of qualified residential rental projects described in § 142(d) to temporarily house displaced individuals, as defined below, regardless of their income, in accordance with this Notice. The Service has determined that the projects to which this approval may be given can be located in any State, regardless of whether a major disaster declaration with Individual Assistance has been issued for that State.

Consistent with Notice 2012–68, the term “displaced individual” means, for purposes of this Notice, 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.

SECTION 1. SUSPENSION OF INCOME LIMITATIONS

The Service has determined that it is appropriate to temporarily suspend certain income limitation requirements under § 142(d) that apply to qualified residential rental projects financed with tax-exempt bonds issued by a qualified issuer under § 103 (“Issuer”). The suspension, described in Section 3 below, is available to both qualified residential rental projects under § 142(d) that are not subject to any LIHTC-related requirements (“Bond Projects”) and to qualified residential rental projects under § 142(d) that are also subject to LIHTC-related requirements (“Bond/LIHTC Projects”). For purposes of this Notice, the term “Project” refers to either a Bond Project or a Bond/LIHTC Project.

SECTION 2. GENERAL REQUIREMENTS

.01 Issuer Approval for Relief. If an Issuer that issued exempt facility bonds for a Project desires to allow the use of the Project to temporarily house displaced individuals, the Issuer must approve that use and must determine an appropriate period for the temporary housing, not to extend beyond November 30, 2013 ("Temporary Housing Period"). If a Bond/LIHTC Project subject to both Notice 2012-68 and this Notice receives approval, for purposes of § 42, for a Temporary Housing Period and for the suspension of income limitations from a State housing agency (as contemplated in Section IV(2) of Notice 2012-68) and that agency is not the Issuer, then the income limitations under § 142(d) for that Bond/LIHTC Project are suspended only if the project also receives the Issuer's consent for a suspension. An Issuer that chooses to provide that consent must adopt for purposes of § 142(d) the same Temporary Housing Period that the agency adopted for purposes of § 42.

.02 Protection of Tenants. Existing tenants in a Project whose income is at or below an applicable income limitation under § 142(d) cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.

.03 Certification and Recordkeeping Requirements. The Project operator must comply with the certification and recordkeeping requirements in Section 4 of this Notice. For certification and recordkeeping requirements under § 42, see Notice 2012-68.

.04 Rent Restrictions. To the extent such rent restrictions are applicable, rents for the low-income units that house displaced individuals must not exceed the lesser of--
(1) the maximum gross rent for that unit under § 142(d)(4)(B); or

(2) the maximum gross rent for that unit under § 42(g)(2).

.05 Project Must Meet All Remaining Requirements. Except as expressly provided in this Notice, a Project continues to be subject to all other rules and requirements of § 142(d) and § 103.

SECTION 3. RELIEF FROM SECTION 142 REQUIREMENTS

.01 Qualified Project Period. Only a unit in a Project occupied by a non-displaced individual counts for purposes of determining the beginning of the qualified project period under § 142(d)(2)(A). Thus, only non-displaced individuals are counted for determining the 1st day on which 10 percent of the residential units in a Project are occupied under § 142(d)(2)(A). However, occupancy of a unit by any tenant (whether a displaced individual or a non-displaced individual) in a Project counts for purposes of determining the end of the qualified project period under § 142(d)(2)(A)(i). If occupancy by a displaced individual in a Project causes any termination of assistance with respect to the Project under section 8 of the United States Housing Act of 1937, then that termination is disregarded for determining when the qualified project period ends under § 142(d)(2)(A)(iii).

.02 Satisfaction of the Non-Transient Use Requirement. The occupancy of a unit in a Project by a displaced individual during the Temporary Housing Period is treated as satisfying the non-transient use requirement applicable to qualified residential rental projects described in § 142(d). See § 1.103-8(b)(4); see also Notice 2012-68 for suspension of the non-transient use requirement under § 42(i)(3)(B)(i).

.03 Income Qualification of Units in Bond Projects during Temporary Housing Period. A unit in a Bond Project occupied by a displaced individual during the

Temporary Housing Period retains the income status it had immediately before that occupancy, regardless of whether the unit was a market-rate unit, a unit occupied by a tenant who met an applicable income limit, a designated low-income unit, or a never previously occupied unit. See Rev. Proc. 2004-39, 2004-29 IRB 49 (treating never previously occupied units as unavailable). This means, for example, that if a unit in a Bond Project had been designated as a low-income unit or rented to an individual whose income was at or below an applicable income limit or was a market-rate unit or an unavailable unit, then the unit remains as such while occupied by a displaced individual during the Temporary Housing Period regardless of the occupancy by, or income of, the displaced individual. Thus, the fact that a unit becomes occupied by a displaced individual does not affect compliance with the 20-50 test or 40-60 test of § 142(d)(1)(A) and (B) (or the 25-60 test under the special rule in § 142(d)(6)).

Under § 142(d)(3)(B), if the income of a low-income resident of a Project rises above a specified percentage of the applicable income limit, then, for that resident's income to continue to be treated as not exceeding the applicable income limit, the next residential unit meeting certain criteria to become available in the same Project must be occupied by a new resident whose income does not exceed the applicable income limit (the "next available unit rule"). For purposes of determining compliance with the next available unit rule, an operator of a Bond Project may disregard the new occupancy of units during the Temporary Housing Period by displaced individuals, and apply the rule solely based on new occupancy by persons who are not displaced individuals. The operator may, however, take into account a displaced individual's occupancy for

purposes of § 142(d)(3)(B) if the operator obtains sufficient evidence that the displaced individual's income does not exceed the applicable income limit.

.04 Income Qualifications of Units in Bond/LIHTC Projects During the Temporary Housing Period. The income status of a unit and the income qualification of the occupant of a unit for purposes of § 142(d) in a Bond/LIHTC Project occupied by a displaced individual during the Temporary Housing Period shall be treated the same as they are for purposes of § 42 under Notice 2012-68. For purposes of determining compliance with the next available unit rule, an operator of a Bond/LIHTC Project may disregard the new occupancy of units during the Temporary Housing Period by displaced individuals, and apply the rule solely based on new occupancy by persons who are not displaced individuals. The operator may, however, take into account a displaced individual's occupancy for purposes of § 142(d)(3)(B) if the operator obtains sufficient evidence that the displaced individual's income does not exceed the applicable income limit.

.05 Income Qualifications when Temporary Housing Period Ends. After the end of the Temporary Housing Period, the status as a displaced individual of an occupant remaining in a unit in a Project will be disregarded and the status of the unit occupied by such individual and the income of such individual will be re-evaluated as though the formerly displaced individual commenced occupancy of the unit on the day immediately following the end of the Temporary Housing Period. Thus, if the displaced individual remains in the unit, the unit will be treated as occupied for all purposes of § 142(d) and the income of the displaced individual will be used for determining compliance with the requirements of § 142(d). If non-compliance relates to continued occupancy of the unit

after the Temporary Housing Period by an occupant who was a displaced individual during the Temporary Housing Period, a 60-day period is allowed for correction.

SECTION 4. CERTIFICATIONS AND RECORDKEEPING

In addition to any information and certifications required by § 142(d)(7), Project operators must maintain and certify certain information concerning each displaced individual temporarily housed in the Project. The records must contain the following information: the name of the displaced individual, the address of the damaged residence of the displaced individual, the displaced individual's 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. In addition, the Project operator must keep accurate records of the Issuer's approval of the Project's use for displaced individuals and the approved Temporary Housing Period and the dates during which displaced individuals occupied units in the Projects.

The recordkeeping described under this paragraph must be included as part of the books and records of the Project operator and also must be maintained in a manner that is consistent with any compliance monitoring process imposed by § 142(d).

SECTION 5. EFFECTIVE DATE

To be consistent with Notice 2012-68, this Notice is effective as of October 22, 2012.

SECTION 6. 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 entitled "Section 4: 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 units in certain Projects. 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.

SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Timothy L. Jones of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Mr. Jones at (202) 622-3980 (not a toll-free call).