

Part III - Administrative, Procedural, and Miscellaneous

Notice 2022-05

I. PURPOSE

Because of the Coronavirus Disease 2019 (COVID-19) pandemic, the Department of the Treasury and the Internal Revenue Service issued Notice 2021-12, 2021-6 I.R.B. 828, as clarified by Notice 2021-17, 2021-14 I.R.B. 984, to provide temporary relief from certain requirements under § 42 of the Internal Revenue Code (Code) for qualified low-income housing projects and under §§ 142(d) and 147(d) of the Code for qualified residential rental projects. In response to the continuing presence of the pandemic and precautions necessitated by new disease variants, this notice provides certain new relief and extends the temporary relief for certain requirements addressed in Notice 2021-12. Section III of this notice describes the persons eligible for the relief granted in sections IV through VI of this notice.

II. BACKGROUND

A. Qualified low-income housing projects

In this notice, the terms “Agency,” and “Owner” have the same meanings as described in section 5 of Rev. Proc. 2014-49, 2014-37 I.R.B. 535.

For background on the requirements under § 42 that are receiving an extension under this notice of the relief provided under Notice 2021-12, refer to Section II.A of Notice 2021-12.

An additional requirement under § 42 relating to an Agency's inspection of low-income units as provided in § 1.42-5(c)(2)(iii)(C)(2) of the Income Tax Regulations is the 15-day reasonable notice requirement described in § 1.42-5(c)(2)(iii)(C)(3). Section 1.42-5(c)(2)(iii)(C)(2) provides that an Agency must select the low-income units to inspect and low-income certifications to review in a manner that does not give advance notice that a particular low-income unit (or low-income certifications for a particular low-income unit) will or will not be inspected (or reviewed) for a particular year. The Agency may notify the owner of the low-income units for on-site inspection only on the day of inspection. However, the Agency may give an owner reasonable notice that there will be an inspection of the project and of not-yet-identified low-income units or a review of low-income certifications of not-yet-identified low-income units. The notice serves to enable the owner to assemble needed documentation for low-income certifications for review and to notify tenants of the possibility of physical inspection of their units. Section 1.42-5(c)(2)(iii)(C)(3) provides that reasonable notice is generally no more than 15 days.

Under § 42(m)(1)(A)(i), an Agency's qualified allocation plan (QAP) must have been approved by the governmental unit of which the Agency is a part. This approval is to be made in accordance with rules similar to certain rules in § 147(f)(2), other than § 147(f)(2)(B)(ii). Because approval under § 147(f)(2)(B)(i) involves a public hearing, such a hearing is also required for purposes of § 42(m)(1)(A)(i). In response to the

COVID-19 pandemic, hearings under § 147 were permitted to be conducted telephonically. See Rev. Proc. 2021-39, 2021-38 I.R.B. 426. In addition, Notice 2021-12 permitted hearings under § 42(m)(1)(A)(i) to be conducted telephonically.

B. Qualified residential rental projects financed by bonds

In this notice, the terms “Issuer” and “Operator” have the same meanings as described in section 4 of Rev. Proc. 2014-50, 2014-37 I.R.B. 540.

For background on the requirements under §§ 142(d) and 147(d) that are receiving an extension under this notice of the relief provided under Notice 2021-12, refer to Section II.B of Notice 2021-12.

C. Postponement of certain deadlines by reason of Presidentially declared disasters

On March 13, 2020, the President of the United States issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121 et seq., in response to the ongoing COVID-19 pandemic (Emergency Declaration).¹ The Emergency Declaration instructed the Secretary of the Treasury “to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a).” Subsequent to the Emergency Declaration, the President issued major disaster declarations under the authority of the Stafford Act with respect to all 50 States, the District of Columbia, and 5 territories (Major Disaster Declarations).² In addition, under § 1.42-13(a), the Secretary of the Treasury or her delegate has the general authority to issue guidance and provide relief to carry out the purposes of § 42.

¹ See <https://www.fema.gov/news-release/20200514/president-donald-j-trump-directs-fema-support-under-emergency-declaration>.

² See <https://www.fema.gov/coronavirus/disaster-declarations>.

In the context of a Presidentially-declared Major Disaster, Rev. Proc. 2014-49 provides temporary relief from certain requirements of § 42 for Agencies and Owners of low-income housing projects. Under section 8 of Rev. Proc. 2014-49, in the case of a casualty loss suffered due to a Major Disaster that has reduced a low-income building's qualified basis, the Agency that has jurisdiction over the building must determine what constitutes a reasonable restoration period. The reasonable restoration period established by the Agency must not extend beyond the end of the 25th month following the close of the month of the Major Disaster declaration (25-month reasonable restoration period). Until the restoration is completed, to determine the credit amount allowable during the reasonable restoration period for a building described in section 8 of Rev. Proc. 2014-49, an Owner must use the building's qualified basis at the end of the taxable year immediately preceding the first day of the incident period for the Major Disaster.

Rev. Proc. 2014-49 also provides emergency housing relief for individuals who are displaced by a Major Disaster from their principal residences in certain Major Disaster Areas. See Rev. Proc. 2014-49, sections 12-14. In the context of a Presidentially-declared Major Disaster, Rev. Proc. 2014-50 provides temporary relief from certain requirements under § 142(d) for qualified residential rental projects financed with exempt facility bonds issued by State and local governments under § 142. Rev. Proc. 2014-50 also provides emergency housing relief for individuals who are displaced by a Major Disaster from their principal residences in certain Major Disaster Areas. See Rev. Proc. 2014-50, sections 5-7.

Notice 2020-23, 2020-18 I.R.B. 742, published on April 27, 2020, provided certain relief to affected taxpayers and postponed due dates until July 15, 2020, with respect to certain tax filings and payments, certain time-sensitive government actions, and all time-sensitive actions listed in Rev. Proc. 2018-58, 2018-50 I.R.B. 990 (Dec. 10, 2018), that were due to be performed on or after April 1, 2020, and before July 15, 2020, including certain actions under § 42 for qualified low-income housing projects.

Notice 2020-53, 2020-30 I.R.B. 151, published on July 20, 2020, extended until December 31, 2020, the relief provided in Notice 2020-23 for § 42 qualified low-income housing projects, as well as providing until December 31, 2020, additional relief under § 42 and under §§ 142(d) and 147(d) for qualified residential rental projects.

Notice 2021-12, published on February 8, 2021, extended the temporary relief provided in Notice 2020-53, and also provided temporary relief from additional § 42 requirements not previously addressed in Notice 2020-53.

Notice 2021-17, published on April 5, 2021, clarified Notice 2021-12 by providing a more precise citation in section IV.E of that notice.

III. SCOPE OF THE RELIEF GRANTED IN THIS NOTICE

Sections IV.A through F of this notice apply to certain deadlines related to low-income housing projects under § 42. Sections V.A through D apply to relief involving operational waivers for low-income housing projects, and Section V.E applies to relief involving operational waivers both for those projects and for qualified rental projects under § 142(d). Sections VI.A and B apply to private activity bonds that are issued for the acquisition of buildings intended to be qualified residential rental projects and that are qualified bonds (as defined in § 141(e)) if the applicable requirements of §§ 142(d)

and 147(d)(2) are satisfied. All of the provisions in Sections IV through VI also apply to Agencies, Owners, Issuers, and Operators that have responsibilities with respect to those projects and bonds.

IV. GRANT OF RELIEF FOR DEADLINES RELATED TO THE LOW-INCOME HOUSING CREDIT

In this Section IV, “original deadline” means the deadline without regard to any extension under Notice 2020-23, Notice 2020-53, or Notice 2021-12 (as clarified by Notice 2021-17).

A. THE 10-PERCENT TEST FOR CARRYOVER ALLOCATIONS

- For purposes of § 42(h)(1)(E)(ii), if the original deadline for an Owner of a building with a carryover allocation to meet the 10-percent test is on or after April 1, 2020, and on or before December 31, 2020, the deadline is extended to the original deadline plus two years.
- If the original deadline is on or after January 1, 2021, and before December 31, 2022, the deadline is extended to December 31, 2022.

B. THE § 42(e) 24-MONTH MINIMUM REHABILITATION EXPENDITURE PERIOD

- For purposes of § 42(e)(3)(A)(ii), if the original deadline for the 24-month minimum rehabilitation expenditure period for a building originally is on or after April 1, 2020, and is on or before December 31, 2021, then that deadline is extended to the original date plus 18 months.
- If the original deadline for this requirement is on or after January 1, 2022, and on or before June 30, 2022, then that deadline is extended to June 30, 2023.

- If the original deadline for this requirement is on or after July 1, 2022, and on or before December 31, 2022, then that deadline is extended to the original date plus 12 months.
- If the original deadline for this requirement is on or after January 1, 2023, and on or before December 30, 2023, then that deadline is extended to December 31, 2023.

C. PLACED IN SERVICE DEADLINE

- For purposes of § 42(h)(1)(E)(i), if the original deadline for a low-income building to be placed in service is the close of calendar year 2020, the new deadline is the close of calendar year 2022 (that is, December 31, 2022).
- If the original placed-in-service deadline is the close of calendar year 2021 and the original deadline for the 10-percent test in § 42(h)(1)(E)(ii) was before April 1, 2020, the new placed-in-service deadline is the close of calendar year 2022 (that is, December 31, 2022).
- If the original placed-in-service deadline is the close of calendar year 2021 and the original deadline for the 10-percent test in § 42(h)(1)(E)(ii) was on or after April 1, 2020, and on or before December 31, 2020, then the new placed-in-service deadline is the close of calendar year 2023 (that is, December 31, 2023).
- If the original placed-in-service deadline is the close of calendar year 2022 (and thus the original deadline for the 10-percent test was in 2021), then the new placed-in-service deadline is the close of calendar year 2023 (that is, December 31, 2023).

D. REASONABLE PERIOD FOR RESTORATION OR REPLACEMENT IN THE EVENT OF CASUALTY LOSS

For purposes of § 42(j)(4)(E) both in the case of a casualty loss not due to a pre-COVID-19-pandemic Major Disaster and in situations governed by section 8.02 of Rev. Proc. 2014-49 in the case of a casualty loss due to a pre-COVID-19-pandemic Major Disaster, if a low-income building's qualified basis is reduced by reason of the casualty loss and the reasonable period to restore the loss by reconstruction or replacement that was originally set by the HCA (original Reasonable Restoration Period) ends on or after April 1, 2020, then the last day of the Reasonable Restoration Period is postponed by eighteen months but not beyond December 31, 2022. Notwithstanding the preceding sentence, the Agency may require a shorter extension, or no extension at all.

For purposes of determining the credit amount allowable under § 42(a) in the case of a credit year that ends on or after April 1, 2020, and not later than the end of the Reasonable Restoration Period (taking into account any extension under the preceding paragraph), if the Owner restores the building by the end of that extended Reasonable Restoration Period, then for taxable years ending after the first day of the casualty and before the completion of the restoration, the Owner must use the building's qualified basis at the end of the taxable year immediately preceding the first day of the casualty as the building's qualified basis for that credit year.

E. EXTENSION TO SATISFY OCCUPANCY OBLIGATIONS

If the close of the first year of the credit period with respect to a building is on or after April 1, 2020, and on or before December 31, 2022, then, for purposes of § 42(f)(3)(A)(ii), the qualified basis for the building for the first year of the credit period is calculated by taking into account any increase in the number of low-income units by the close of the 6-month period following the close of that first year.

F. CORRECTION PERIOD

For purposes of § 1.42-5, if a correction period that was set by the Agency ends on or after April 1, 2020, and before December 31, 2021, then the end of the correction period (including as already extended, if applicable) is extended by a year, but not beyond December 31, 2022. If the correction period originally set by the Agency ends during 2022, the end of the period is extended to December 31, 2022. Notwithstanding the preceding sentences, the Agency may require a shorter extension, or no extension at all.

V. GRANT OF RELIEF FOR OPERATIONAL PROVISIONS

A. COMPLIANCE-MONITORING—REVIEW OF TENANT FILES

For purposes of § 1.42-5, an Agency is not required to review tenant files in the period beginning on April 1, 2020, and ending on December 31, 2021. The Agency must have resumed tenant-file review as due under § 1.42-5 as of January 1, 2022.

For purposes of § 1.42-5(c)(2)(iii)(C)(3), between April 1, 2020, and the end of 2022, when the Agency gives an Owner reasonable notice that it will review low-income certifications of not-yet-identified low-income units, it may treat reasonable notice as being up to 30 days. Beginning on January 1, 2023, for this purpose reasonable notice again is generally no more than 15 days.

B. COMPLIANCE-MONITORING—PHYSICAL INSPECTIONS

For purposes of § 1.42-5, an Agency is not required to conduct compliance-monitoring physical inspections in the period beginning on April 1, 2020, and ending on June 30, 2022. Because of high State-to-State and intra-State variability of COVID-19 transmission, an Agency, in consultation with public health experts, may extend the waiver in the preceding sentence if the level of transmission makes such an extension

appropriate. Depending on varying rates of transmission, the extension may be State-wide, may be limited to specific locales, or may be on a project-by-project basis. No such extension may go beyond December 31, 2022. The Agency must resume compliance-monitoring reviews as due under § 1.42-5 once the waiver expires.

For purposes of § 1.42-5(c)(2)(iii)(C)(3), between April 1, 2020, and the end of 2022 only, when the Agency gives an Owner reasonable notice that it will physically inspect not-yet-identified low-income units, it may treat reasonable notice as being up to 30 days. Beginning on January 1, 2023, for this purpose reasonable notice again is generally no more than 15 days.

C. COMMON AREAS AND AMENITIES

A temporary full or partial unavailability or closure of an amenity or common area in a low-income building or project does not result in a reduction of eligible basis of the affected building if the unavailability or closure is during some or all of the period from April 1, 2020, to December 31, 2022, and is in response to the COVID-19 pandemic and not because of other noncompliance with § 42. During the above period, an Agency may deny any application of the above waiver or, based on public health criteria, may limit the waiver to partial closure, or to limited or conditional access of an amenity or common area. (For example, the Agency may apply the waiver to access an amenity or common area that is limited to persons wearing masks or to persons fully vaccinated against COVID-19.)

D. PERMISSION FOR AGENCIES TO CONDUCT HEARINGS IN THE SAME MANNER AND UNDER THE SAME PROCEDURES AS PRIVATE-ACTIVITY-BOND HEARINGS

Beginning on April 1, 2020, for the purposes of QAP approval under § 42(m)(1)(A), if a public hearing is conducted in a manner and under procedures such

that § 1.147(f)-1(d) would be satisfied, taking into account the date on which the hearing is held, then the manner and procedures of the hearing are acceptable for QAP approval under § 42(m)(1)(A).³ Continued application of the preceding sentence is not dependent on the continuation of the COVID-19 pandemic.

E. EMERGENCY HOUSING FOR MEDICAL PERSONNEL AND OTHER ESSENTIAL WORKERS

If individuals are medical personnel or other essential workers (as defined by State or local governments) that provide services during the COVID-19 pandemic, then, for purposes of providing emergency housing from April 1, 2020, to December 31, 2022, under Rev. Proc. 2014-49 or under Rev. Proc. 2014-50, Agencies, Issuers, Owners, and Operators of low-income housing projects may treat these individuals as if they were Displaced Individuals (defined under section 5.02 of Rev. Proc. 2014-49 or Section 4.04 of Rev. Proc. 2014-50, as applicable). That is, Agencies, Issuers, Owners, and Operators may provide emergency housing for these individuals pursuant to the provisions of the applicable revenue procedure. See sections 12, 13, and 14 of Rev. Proc. 2014-49 and sections 5, 6, and 7 of Rev. Proc. 2014-50.

VI. GRANT OF RELIEF FOR DEADLINES ASSOCIATED WITH QUALIFIED RESIDENTIAL RENTAL PROJECTS

In this Section VI, “originally” means without regard to any extension under Notice 2020-23, Notice 2020-53, or Notice 2021-12 (as clarified by Notice 2021-17).

³ For example, while Rev. Proc. 2021-39 is in effect, satisfying the hearing procedures in that revenue procedure satisfies the procedural requirements for QAP hearings.

A. THE 12-MONTH TRANSITION PERIOD TO MEET SET-ASIDES FOR QUALIFIED RESIDENTIAL RENTAL PROJECTS

For purposes of section 5.02 of Rev. Proc. 2004-39, if the last day of a 12-month transition period for a qualified residential rental project originally was on or after April 1, 2020, and before December 31, 2022, then that last day is postponed to December 31, 2022.

B. THE § 147(d) 2-YEAR REHABILITATION EXPENDITURE PERIOD FOR BONDS USED TO PROVIDE QUALIFIED RESIDENTIAL RENTAL PROJECTS

If a bond is used to provide a qualified residential rental project and if the last day of the § 147(d) 2-year rehabilitation expenditure period for the bond originally was on or after April 1, 2020, and before December 31, 2023, then that last day is postponed to the earlier of eighteen months from the original due date or December 31, 2023.

VII. EFFECT ON OTHER DOCUMENTS

Notice 2020-23, Notice 2020-53, Notice 2021-12, Notice 2021-17, Rev. Proc. 2004-39, Rev. Proc. 2014-49, and Rev. Proc. 2014-50 are amplified.

VIII. DRAFTING INFORMATION

The principal authors of this notice are Dillon Taylor and Michael Torruella Costa, Office of Associate Chief Counsel (Passthroughs & Special Industries) and David White, Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice relating to the low-income housing credit, please contact Dillon Taylor or Michael Torruella Costa at (202) 317-4137 (not a toll-free call); for further information regarding this notice relating to qualified residential rental projects, please contact David White at (202) 317-4562 (not a toll-free call).