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Disaster-Related Guidance Suspends Some Rules on Bond-Financed Housing.

The IRS issued guidance (Rev. Proc. 2014-50) to automatically suspend some requirements under section 142(d) for qualified residential rental projects financed with exempt facility bonds issued by state and local governments under section 142.
In the year following a presidential declaration of a qualifying major disaster, the revenue procedure suspends the income requirements for units occupied by individuals displaced by the disaster and modifies other requirements of section 142(d) to accommodate the suspension. The guidance provides relief for bond projects as well as bond/low-income housing tax credit (LIHTC) projects.

Under the revenue procedure, a project operator may provide emergency housing relief for less than the designated temporary housing period. The revenue procedure explains the circumstances under which an operator may accept a displaced individual as a tenant and explains requirements for the provision of emergency housing relief.

The guidance also provides that the occupancy of a unit by a displaced individual during the temporary housing period is treated as satisfying the non-transient use requirement under reg. section 1.103-8(b)(4). Further, the guidance discusses the treatment of displaced individuals under the next-available-unit rule, the income qualifications for units in bond projects and bond/LIHTC projects during the temporary housing period, the treatment of a unit vacated by a displaced individual, and the income qualifications when the temporary housing period ends.

Rev. Proc. 2014-50 is effective for major disasters declared on or after August 21, 2014.

Citations: Rev. Proc. 2014-50; 2014-37 IRB 1

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also Part 1, §§ 142 and 42; 1.103-8)

SECTION 1. PURPOSE

In the context of a Major Disaster, this revenue procedure provides temporary relief from certain requirements of § 142(d) of the Internal Revenue Code for Issuers and Operators. This revenue procedure also provides emergency housing relief for individuals who are displaced by a Major Disaster from their principal residences in certain Major Disaster Areas. This revenue procedure provides relief for both Bond Projects and Bond/LIHTC Projects. For Bond/LIHTC Projects, see also Rev. Proc. 2014-49, I.R.B. 2014-37, which provides for emergency housing relief under § 42 in response to Major Disasters. See section 4 of this revenue procedure for definitions of certain capitalized terms appearing throughout this revenue procedure.

SECTION 2. BACKGROUND

.01 Upon issuance of the President's declaration of a Major Disaster, the Federal Emergency Management Agency (FEMA) may designate particular cities, counties, or other local jurisdictions covered by the declaration as eligible for Individual Assistance, Public Assistance, or both. With respect to some previous Presidential declarations of Major Disasters, the Internal Revenue Service (Service) issued notices providing relief from certain requirements under §§ 42 and 142(d) to facilitate emergency housing relief for Displaced Individuals without regard to the income of those Displaced Individuals.

.02 Generally, under § 103, private activity bonds that are not qualified bonds within the meaning of § 141 are not tax-exempt. Section 141(e) provides in part that the term "qualified bond" means any private activity bond if such bond is an exempt facility bond, and § 142(a) provides in part that the term "exempt facility bond" means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide qualified residential rental projects. To be a qualified residential rental project, a residential rental housing project must meet the requirements in § 142(d). The requirements include the following rules.

(1) At all times during the qualified project period, a specified percentage of the residential units must be occupied by individuals whose income does not exceed applicable income limits (the set-aside requirements). § 142(d)(1) and (d)(6).

(2) The qualified project period begins on the first day on which 10 percent of the residential units in the Project are occupied and ends on the latest of (a) the date that is 15 years after the date on which 50 percent of the residential units in the Project are occupied, (b) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or (c) the date on which any assistance provided with respect to the Project under section 8 of the United States Housing Act of 1937 terminates. § 142(d)(2)(A).

(3) Generally, if the income of an occupant of a residential unit was at or below the applicable income limits when occupancy of that unit began, the occupant's income is treated as continuing to be at or below those limits throughout that occupant's occupancy. If, however, the income of the occupant rises above a specified percentage of the applicable income limit, the occupant's income is treated as continuing to be at or below the applicable income limit only if the next available unit in the same project that meets certain criteria is occupied by a person whose income is at or below the applicable income limit (the next-available-unit rule). § 142(d)(3)(B).

(4) The Owner may elect to treat the project as a deep rent skewed project, in which case certain modifications to the next-available-unit rule, an additional set-aside requirement, and certain rent restrictions apply. § 142(d)(4).

(5) Under regulations issued under the predecessor to § 142(d), units in a qualified residential rental project cannot be used on a transient basis. § 1.103-8(b)(4)(i) of the Income Tax Regulations.

SECTION 3. SCOPE

This revenue procedure applies when the President has declared a Major Disaster. This revenue procedure applies to Displaced Individuals and to all Projects, Issuers, and Operators both inside and outside States containing a Major Disaster Area.

SECTION 4. DEFINITIONS

The following definitions apply for this revenue procedure.

.01 Agency. With respect to a Bond/LIHTC Project, the Agency is the governmental housing credit agency that has jurisdiction over the Project.

.02 Bond Project. A Bond Project is a Project that is not subject to the low-income housing credit requirements under § 42.

.03 Bond/LIHTC Project. A Bond/LIHTC Project is a Project that is also subject to the low-income housing credit requirements under § 42.

.04 Displaced Individual. A Displaced Individual is an individual who is displaced from his or her principal residence as a result of a Major Disaster and whose principal residence was located in a Major Disaster Area designated as eligible for Individual Assistance by FEMA.

.05 Issuer. The Issuer is the entity that issued tax-exempt, exempt facility bonds for a Project under §§ 142(d) and 103.

.06 Low-Income Individual. A Low-Income Individual is an individual whose income either is at or below the applicable income limit or is treated as at or below the applicable income limit under § 142(d)(3)(B).

.07 Major Disaster. A Major Disaster is an event for which the President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.

.08 Major Disaster Area. A Major Disaster Area is any city, county, or other local jurisdiction for which a Major Disaster has been declared by the President and which has been designated by FEMA as eligible for Individual Assistance, Public Assistance, or both.

.09 Market-Rate Unit. A Market-Rate Unit is a unit occupied by an individual that is not a Low-Income Individual.

.10 Operator. The Operator of a Project is the person to whom the Issuer or Owner delegates responsibility for ensuring that the Project continues to meet the requirements applicable to qualified residential rental projects under §§ 142 (d) and 103. (That person may be, but does not have to be, the Owner.)

.11 Owner. An Owner is the owner of a Project.

.12 Project. A Project is a qualified residential rental project that is financed with exempt facility bonds under § 142(d), whether or not it is also subject to the low-income housing credit requirements under § 42.

.13 Temporary Housing Period. A Temporary Housing Period is the period, if any, beginning on the first day of the incident period, as determined by FEMA, and ending on the date determined by the Issuer under section 5.02 of this revenue procedure.

SECTION 5. EMERGENCY HOUSING RELIEF — REQUIREMENTS AND RESTRICTIONS

.01 Requirements for Relief. For an Operator to use the relief provided in section 6 of this revenue procedure, the conditions in this section 5 must be satisfied.

.02 Issuer Approval.

(1) The Issuer provides written approval to the Operator for use of the Project to house Displaced Individuals and specifies the date on which the Temporary Housing Period for the Project ends. The Temporary Housing Period cannot exceed 12 months from the end of the month in which the President declared the Major Disaster.

(2) Issuer approval is required even if a Bond/LIHTC Project subject to Rev. Proc. 2014-49 receives approval from the Agency (as contemplated in Section 12.02(1) of Rev. Proc. 2014-49). An Issuer that provides approval for a Bond/LIHTC Project must adopt for purposes of § 142(d) and this revenue procedure the same Temporary Housing Period that the Agency adopts for purposes of § 42 for that Bond/LIHTC Project.

.03 Protection of Existing Tenants. No existing tenant whose income is, or is treated as, at or below an applicable income limit under § 142(d) may be evicted or otherwise have his or her occupancy terminated solely to provide emergency housing relief for a Displaced Individual.

.04 Recordkeeping Requirements. The Operator complies with the recordkeeping requirements in section 7 of this revenue procedure.

.05 Rent Restrictions. If units are treated as occupied by Low-Income Individuals under section 6 of this revenue procedure because they house Displaced Individuals, then rent restrictions are applicable in deep rent skewed Projects and in Bond/LITHC Projects. In these cases, the amounts that the Displaced Individuals are charged as gross rent must satisfy §§ 142(d)(4)(B) and 42(g)(2) to the extent that those provisions are applicable.

.06 Project Meets All Remaining Requirements. Except as expressly provided in this revenue procedure, a Project meets all other rules and requirements of §§ 142(d) and 103.

SECTION 6. EMERGENCY HOUSING RELIEF — IMPLEMENTATION

.01 Discretion to Apply Relief.

(1) This revenue procedure authorizes but does not require provision of emergency housing relief to Displaced Individuals during the Temporary Housing Period. If an Operator chooses not to provide emergency housing relief under sections 5, 6, and 7 of this revenue procedure, then all of the rules under § 142 (d) apply.

(2) If an Operator chooses to provide emergency housing relief under sections 5, 6, and 7 of this revenue procedure then —

(A) The Operator may provide emergency housing relief for less than the full Temporary Housing Period;

(B) If a Displaced Individual has demonstrated qualification as low income and the Operator wishes to accept the individual as a tenant, the Operator may either accept the Displaced Individual as a low-income tenant applying all the rules under § 142(d) or provide emergency housing relief to the Displaced Individual under sections 5, 6, and 7 of this revenue procedure; and

(C) If a Displaced Individual has not demonstrated qualification as low income and the Operator wishes to accept the individual as a tenant, the Operator may either accept the Displaced Individual as a tenant that is not a low-income tenant or provide emergency housing relief to the Displaced Individual under sections 5, 6, and 7 of this revenue procedure.

.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 under § 1.103-8 (b)(4).

.03 Treatment of Displaced Individuals Under the Next-Available-Unit Rule. During the Temporary Housing Period, for purposes of determining compliance with the next-available-unit rule under § 142(d)(3)(B), an Operator disregards any unit then occupied by one or more Displaced Individuals and applies the rule based solely on occupancy by persons who are not Displaced Individuals. See sections 6.04 and 6.05 of this revenue procedure for the treatment of income of Displaced Individuals for purposes of § 142(d).

.04 Income Qualification of Units in Bond Projects During Temporary Housing Period. If a Displaced Individual begins occupancy of a unit in a Bond Project during the Temporary Housing Period, then the unit retains the status it had immediately before that occupancy. The actual income of the Displaced Individual occupying the unit is disregarded during the Temporary Housing Period for purposes of § 142(d). That is —

(1) If a unit in a Bond Project was a unit occupied by a Low-Income Individual, a Market-Rate Unit, a unit never previously occupied, 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. See Rev. Proc. 2004-39, 2004-2 C.B. 49 (treating never previously occupied units as unavailable).

(2) The income of the Displaced Individual occupying the unit does not affect whether the Bond Project satisfies the set-aside requirement, including the additional set-aside requirement for deep rent skewed Projects.

.05 Income Qualification of Units in Bond/LIHTC Projects During Temporary Housing Period. During the Temporary Housing Period, a unit in a Bond/LIHTC Project then occupied by a Displaced Individual is treated for purposes of § 142(d) in a manner similar to how it is treated for purposes of § 42 under Rev. Proc. 2014-49. That is, during the Temporary Housing Period —

(1) The actual income of the Displaced Individual occupying the unit is disregarded for purposes of § 142(d);

(2) To the extent provided in Rev. Proc. 2014-49, if a Displaced Individual takes occupancy of a unit in a Bond/LIHTC Project during the first year of the credit period, the unit is treated as a unit occupied by a Low-Income Individual; and if, after the first year of the credit period, a Displaced Individual begins occupancy of a unit, that unit retains the status that it had before occupancy by the Displaced Individual, whether as a unit occupied by a Low-Income Individual, a Market-Rate Unit, a unit never previously occupied, or an unavailable unit, as the case may be.

.06 Treatment of a Unit Vacated by a Displaced Individual.

(1) If a Displaced Individual vacates a unit in a Project before the end of the Temporary Housing Period, that unit retains the status provided under section 6.04 or section 6.05 of this revenue procedure until it is occupied by the next tenant, even if the next tenant takes occupancy after the end of the Temporary Housing Period. If the next tenant is also a Displaced Individual and begins occupancy during the Temporary Housing Period, the status of the unit is determined under section 6.04 or 6.05 of this revenue procedure. If the next tenant is not a Displaced Individual or begins occupancy after the end of the Temporary Housing Period, the status of the unit is determined under § 142(d).

(2) For as long as a unit retains its status because of the application of this section 6.06, the relief provided under section 6.08 of this revenue procedure applies to that unit. In particular, the unit is disregarded for determining the start of the qualified project period.

.07 Income Qualifications when Temporary Housing Period Ends.

(1) If a Displaced Individual continues to occupy a unit in the Project at the end of the Temporary Housing Period, then except as provided in section 6.07(3) of this revenue procedure, the status of the unit occupied by the Displaced Individual and the income of that individual are re-evaluated as though the individual commenced occupancy of the unit on the day immediately following the end of the Temporary Housing Period. For example, a unit is a Market-Rate Unit beginning immediately after the end of the Temporary Housing Period if, immediately after the end of the Temporary Housing Period, the Displaced Individual's income exceeds the applicable income limit.

(2) If the Project fails to comply with the set-aside requirement of § 142(d) solely because of continued occupancy of a unit after the Temporary Housing Period by a Displaced Individual, a 60-day period is allowed for correction.

(3) If the Displaced Individual was accepted as a low-income tenant applying all the rules under § 142(d) as permitted by section 6.01(2)(B) of this revenue procedure, then all the rules under § 142(d) apply to the Displaced individual, including § 142(d)(3)(B).

.08 Qualified Project Period.

(1) Start of the Qualified Project Period. Occupancy of a unit by a Displaced Individual during the Temporary Housing Period does not count for determining the beginning of the qualified project period under § 142(d)(2)(A). Thus, this occupancy is not used to determine the first day on which 10 percent of the residential units in a Project are occupied for purposes of § 142(d)(2)(A).

(2) End of the Qualified Project Period. Occupancy of a unit in a Project by any tenant (whether a Displaced Individual or someone who is not a Displaced Individual) counts for purposes of determining the end of the qualified project period under § 142(d)(2)(A)(i). However, solely for purposes of § 142(d)(2)(A) (iii), the Project is treated as continuing to receive assistance under section 8 of the United States Housing Act of 1937 until the end of the Temporary Housing Period plus 180 days.

SECTION 7. EMERGENCY HOUSING RELIEF — RECORDKEEPING

.01 Operators must maintain certain information concerning each Displaced Individual temporarily housed in the Project under sections 5 and 6 of this revenue procedure. For each Displaced Individual, the records must contain the following items in a statement signed by the Displaced Individual under penalties of perjury:

(1) The name of the Displaced Individual;

(2) The address of the principal residence at the time of the Major Disaster of the Displaced Individual;

(3) The Displaced Individual's social security number; and

(4) A statement that he or she was displaced from his or her principal residence as a result of a Major Disaster and that his or her principal residence was located in a city, county, or other local jurisdiction that is covered by the President's declaration of a Major Disaster and that is designated

as eligible for Individual Assistance by FEMA because of the Major Disaster.

.02 The Operator must maintain a record both of the Issuer's approval of the Project's use for Displaced Individuals and of the approved Temporary Housing Period. The Operator must report to the Issuer at the end of the Temporary Housing Period a list of the names of the Displaced Individuals and the dates the Displaced Individuals began occupancy. The Operator must also provide any dates Displaced Individuals ceased occupancy and, if applicable, the date each unit occupied by a Displaced Individual becomes occupied by a subsequent tenant.

.03 The Operator must maintain the records described in this section as part of the annual compliance monitoring process imposed under § 142(d) and provide this information to the Service upon request. For purposes of § 42, Operators of Bond/LIHTC Projects are also subject to the recordkeeping requirements of Rev. Proc. 2014-49.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for Major Disasters declared on or after August 21, 2014.

SECTION 9. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure 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 revenue procedure is in section 7. This information is required to enable the Service to verify whether the Operators and Displaced Individuals satisfy various requirements for the relief provided in this revenue procedure. The collection of information is required to obtain a benefit. The likely respondents are individuals, businesses, and state and local governments.

The estimated total annual recordkeeping burden is 675 hours.

The estimated annual burden per recordkeeper is approximately 30 minutes. The estimated number of recordkeepers is 1,350.

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 § 6103.

SECTION 10. DRAFTING INFORMATION

The principal authors of this revenue procedure are Timothy L. Jones and Spence Hanemann of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Mr. Hanemann at (202) 317-6980 (not a toll-free call).

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