

Part III-Administrative, Procedural, and Miscellaneous

Relief from Certain Low-Income Housing Credit Requirements Due to Hurricane Katrina

Notice 2005-69

The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects in the United States as a result of the devastation caused by Hurricane Katrina. 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

On August 29, 2005, the President declared major disasters for the States of Alabama, Louisiana, and Mississippi as a result of Hurricane Katrina. These declarations were made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Title 42 U.S.C. 5121-5206 (2000 and Supp. II 2002). Subsequently, the Federal Emergency Management Agency (FEMA) designated jurisdictions for Individual Assistance.

State housing credit agencies throughout the United States have requested that the Service allow owners of low-income housing credit projects to provide temporary housing in vacant units to individuals who resided in jurisdictions designated for Individual Assistance in Alabama, Louisiana, and Mississippi and who have been displaced because their residences were destroyed or damaged as a result of the devastation caused by Hurricane Katrina

(displaced individuals). State housing credit agencies have further requested that the temporary housing of the displaced individuals in low-income units without regard to income not cause the owners to lose low-income housing credits. Based upon these requests and because of the widespread damage to housing caused by Hurricane Katrina, the Service has determined that any housing credit agency of a state or a possession of the United States (state housing credit agency) may provide approval to project owners in their respective state or possession to provide temporary emergency housing for displaced individuals in accordance with this notice.

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 projects. The suspension will apply to low-income housing projects approved by the state housing credit agency, in which vacant units are rented to displaced individuals. The state housing credit agency will determine the appropriate period of temporary housing for each project, not to extend beyond September 30, 2006 (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 state housing credit agency (not to extend beyond September 30, 2006), 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 a state housing credit 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) (a low-income unit that was vacant before the effective date of this notice will continue to be treated as a vacant low-income unit even if it houses a displaced individual, a market rate unit that was vacant before the effective date of this notice will continue to be treated as a vacant market rate unit even if it houses a displaced individual, and 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 housing 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 state housing credit agency in accordance with section I of this notice.

IV. OTHER REQUIREMENTS

All other rules and requirements of § 42 will continue to apply during the temporary housing period established by the state housing credit 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 non-transient 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 to a displaced individual after the end of the temporary housing period, a 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

The displaced individual must have resided in an Alabama, Louisiana, or

Mississippi jurisdiction designated for Individual Assistance by FEMA as a result of Hurricane Katrina.

(2) Approval of State Housing Credit Agency

The project owner must obtain approval from the state housing credit agency for the relief described in this notice. The state housing credit agency will determine the appropriate period of temporary housing for each project, not to extend beyond September 30, 2006.

(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: 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 an Alabama, Louisiana, or Mississippi jurisdiction designated for Individual Assistance by FEMA as a result of Hurricane Katrina, the individual requires temporary housing. The owner must list the project on the National Emergency Resource Registry (NERR) maintained by the Department of Homeland Security. The NERR assists coordination efforts between resources that are needed and resources that are available. The web site for listing the project is: www.SWERN.gov.

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 state housing credit agency. The

certifications and recordkeeping for displaced individuals must be maintained as part of the annual compliance monitoring process with the state housing credit agency.

(4) Rent Restrictions

Rents for the low-income units housing 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 DATE

This notice is effective August 29, 2005 (the date of the President's major disaster declarations as a result of Hurricane Katrina).

PAPERWORK REDUCTION ACT

Pursuant to 5 CFR 1320.18(d), the Office of Management and Budget has waived the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) with respect to the recordkeeping requirements contained in this notice.

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 Jack Malgeri of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Mr. Malgeri on (202) 622-3040 (not a toll free call).