

Notice 2020-53

I. PURPOSE

In response to the ongoing Coronavirus Disease 2019 (COVID–19) pandemic, this notice provides 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. Section IV of this notice describes the Agencies, Issuers, Operators, and Owners eligible for the relief granted in section V of this notice, which provides relief pursuant to § 7508A(a) of the Code, and section VI of this notice, which provides relief pursuant to § 1.42–13(a) of the Income Tax Regulations. In this notice, the terms “Agency,” “Issuer,” “Operator,” and “Owner” have the same meanings as described in section 5 of Rev. Proc. 2014-49, 2014-37 I.R.B. 535, or section 4 of Rev. Proc. 2014-50, 2014-37 I.R.B. 540.

II. BACKGROUND

A. Qualified low-income housing projects

Section 42(a) provides that the amount of the low-income housing credit for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

Section 42(c)(1)(A) provides that the qualified basis of any qualified low-income building for any taxable year is an amount equal to (i) the applicable fraction

(determined as of the close of the taxable year) of (ii) the eligible basis of the building (determined under § 42(d)(4)). Sections 42(c) and 42(d) define applicable fraction and eligible basis. Section 42(d)(1) and (2) define the eligible basis of a new building and an existing building, respectively.

Section 42(c)(2) defines a qualified low-income building as any building which is part of a qualified low-income housing project at all times during the “compliance period” (that is, the period of 15 taxable years beginning with the first taxable year of the credit period) and to which the amendments made by section 201(a) of the Tax Reform Act of 1986 (Pub. L. No. 99–514) apply. To qualify as a low-income housing project, one of the § 42(g) minimum set-aside tests, as elected by the taxpayer, must be satisfied.

Under § 42(d)(4)(A) and (B), the eligible basis for a qualified low-income building includes the adjusted basis of the property (of a character subject to the allowance of depreciation) used in common areas or provided as comparable amenities to all residential rental units in the building.

Section 42(e) provides general rules under which rehabilitation expenditures incurred by taxpayers related to a low-income building may be treated as a separate new building. Under § 42(e)(3)(A)(ii), to qualify as a separate new building, the rehabilitation expenditures with respect to a low-income building during a 24-month period (§ 42(e) 24-month minimum rehabilitation expenditure period) must be at least the greater of two statutory criteria.

Section 42(g) sets forth three alternative minimum set-aside tests for low-income housing projects. The Owner of a project must elect one and satisfy that chosen test

each taxable year. Once a taxpayer elects to use a particular set-aside test, the election is irrevocable.

Section 42(h)(1)(E) provides general rules for carryover allocations of the low-income housing credit. A carryover allocation is defined in § 1.42-6(a)(1) of the Income Tax Regulations as an allocation that meets the requirements of § 42(h)(1)(E) (relating to carryover allocations for single buildings) or § 42(h)(1)(F) (relating to carryover allocations for multiple building projects).

Under § 42(h)(1)(E)(i), if a qualified building is placed in service not later than a statutorily specified date, the building is relieved of a requirement concerning the timing of the allocation. Section 42(h)(1)(E)(ii) provides in part, for purposes of § 42(h)(1)(E)(i), that the term “qualified building” means any building which is part of a project if the taxpayer’s basis in the project (as of the date that is 1 year after the date that the allocation was made) is more than 10 percent of the taxpayer’s reasonably expected basis in the project (as of the close of the second calendar year following the calendar year in which an allocation is made) (10-percent test).

In general, under § 42(j)(1), if (1) a building is beyond the first year of the credit period, and (2) at the end of the taxable year, the building’s qualified basis with respect to the taxpayer is less than the qualified basis with respect to the taxpayer at the end of the preceding taxable year, then the credits, if any, for the year of the reduction are determined using the reduced qualified basis, and the taxpayer’s Federal income tax liability for the year of the reduction is increased by the credit recapture amount prescribed in § 42(j)(2).

Section 42(j)(4)(E) provides generally that a building is not subject to recapture by reason of a casualty loss to the extent the loss is restored by reconstruction or replacement within a reasonable period established by the Secretary of the Treasury or his delegate (Secretary).

Section 42(m)(1) requires an Agency to allocate housing credit dollar amounts among candidate proposed housing projects. The allocation must be pursuant to a qualified allocation plan (QAP) that has been approved by the governmental unit of which the Agency is a part. A QAP not only sets forth selection criteria by which an Agency makes these allocations but also provides a procedure that the Agency must follow in monitoring for noncompliance with the provisions of § 42, including monitoring for noncompliance with habitability standards through regular site visits.

Section 1.42-5 provides the general requirements of Agencies' compliance-monitoring responsibilities under their monitoring procedures that must be part of any QAPs. Among the requirements, an Agency must perform physical inspections and low-income certification review.

Section 1.42-5(c)(1)(iii) requires, generally, that the Owner of a low-income housing project certify at least annually to the Agency that, for the preceding 12-month period, the Owner has received an annual income certification from each low-income tenant, and the documentation to support that certification.

Under § 1.42-13(a), the Secretary may provide guidance to carry out the purposes of § 42 through various publications in the Internal Revenue Bulletin.

B. Qualified residential rental projects financed by bonds

Generally, under § 103 of the Code, private activity bonds that are not qualified bonds within the meaning of § 141 of the Code 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).

Section 142(d)(1) provides that the term "qualified residential rental project" means any project for residential rental property if, at all times during the qualified project period, such project meets the requirements under § 142(d)(1)(A) or (B) (§ 142(d) set-aside requirements), whichever is elected by the Issuer at the time of the issuance of the issue with respect to such project.

Section 142(d)(2)(A) provides that the term "qualified project period" means the period beginning on the first day on which 10 percent of the residential units in the project are occupied and ending on the latest of (i) the date that is 15 years after the date on which 50 percent of the residential units in the project are occupied, (ii) the first day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or (iii) the date on which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937 terminates.

Rev. Proc. 2004-39, 2004-2 C.B. 49, sets forth procedures for determining whether a residential rental project complies with the applicable § 142(d) set-aside

requirements during the qualified project period. Under section 5.02 of Rev. Proc. 2004-39, for a period of up to 12 months beginning on the issue date of bonds issued to acquire an existing residential rental project (12-month transition period), a failure to satisfy the § 142(d) set-aside requirements will not cause the acquired project to fail to be a qualified residential rental project.

Section 147(d)(1) provides, with certain exceptions, that a private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the net proceeds of such issue is to be used for the acquisition of any property (or an interest therein) unless the first use of such property is pursuant to such acquisition. The private activity bonds to which § 147(d) applies include bonds to finance qualified residential rental projects.

Section 147(d)(2) provides that § 147(d)(1) shall not apply with respect to any building (and the equipment therefor) if the rehabilitation expenditures with respect to such building, equal or exceed 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the issue.

Section 147(d)(3)(C) provides that the term “rehabilitation expenditures” shall not include any amount which is incurred after the date 2 years after the later of (i) the date on which the building was acquired, or (ii) the date on which the bond was issued (§ 147(d) 2-year rehabilitation expenditure period).

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

Section 7508A provides the Secretary with authority to postpone the time for performing certain acts under the internal revenue laws for a taxpayer determined by

the Secretary to be affected by a Federally declared disaster as defined in § 165(i)(5)(A). Pursuant to § 7508A(a), a period of up to one year may be disregarded in determining whether the performance of certain acts is timely under the internal revenue laws.

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 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).

¹ See <https://www.whitehouse.gov/wp-content/uploads/2020/03/LetterFromThePresident.pdf>.

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

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.

III. NOTICE 2020-23 AND RELIEF UNDER SECTION 42

On April 9, 2020, the Department of the Treasury and the Internal Revenue Service issued Notice 2020-23, 2020-18 I.R.B. 742, which 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. See Notice 2020-23 and Rev. Proc. 2018-58. Among the relief granted, Notice 2020-23 (referencing Rev. Proc. 2018-58) postponed until July 15, 2020, the time to perform certain time-sensitive actions for purposes of § 42 that are due to be performed on or after April 1, 2020, and before July 15, 2020. These time-sensitive actions listed in Rev. Proc. 2018-58 include, among others:

Statute or Regulation	Act Postponed
§ 42(h)(1)(E) and (F)	The taxpayer's basis in the building project, as of the date which is one year after the date that the allocation was made, must be more than 10 percent of the taxpayer's reasonably expected basis in the project.
§ 42(e)(3)(A)(ii)	The taxpayer has a 24-month measuring period in which the requisite amount of rehabilitation expenditures has to be incurred in order to qualify for treatment as a separate new building.
§ 1.42-5(c)	The taxpayer must make certain certifications at least annually to the Agency.

Rev. Proc. 2018-58, section 15, 2018–50 I.R.B. at 1015.

Thus, in addition to other postponements (including other postponements for purposes of § 42 listed in Rev. Proc. 2018-58), Notice 2020-23 postponed until July 15, 2020, the time to perform the following time-sensitive actions for purposes of § 42 that are due to be performed on or after April 1, 2020, and before July 15, 2020:

- The 10-percent test under § 42(h)(1)(E)(ii);
- The 24-month minimum rehabilitation expenditure period under § 42(e); and
- The income recertification requirement under § 1.42-5(c)(1)(iii).

IV. SCOPE OF THE RELIEF GRANTED IN THIS NOTICE

Sections V.A through E and VI.A through D of this notice apply to low-income housing projects under § 42, to qualified residential rental projects under § 142(d), and to Agencies, Issuers, Owners, and Operators that have responsibilities with respect to those projects. Section V.F of this notice applies to bonds for qualified residential rental projects that would be qualified bonds (as defined in § 141(e)) if the requirements of § 147(d)(2) were satisfied. The persons described in this section IV have been determined by the Secretary to be persons affected by the COVID-19 emergency for the purposes of the relief described in section V of this notice. In addition, the recipients of

relief described in section VI of this notice have been determined by the Secretary to be sufficiently affected by the COVID-19 pandemic to merit the relief that is provided here under the authority of § 1.42-13(a).

V. GRANT OF RELIEF PURSUANT TO SECTION 7508A

A. THE 10-PERCENT TEST FOR CARRYOVER ALLOCATIONS

For purposes of § 42(h)(1)(E)(ii), if the last day for an Owner of a building with a carryover allocation to meet the 10-percent test is on or after April 1, 2020, and before December 31, 2020, the last day for the Owner to meet the 10-percent test is postponed to December 31, 2020.

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

For purposes of § 42(e)(3)(A)(ii), if the 24-month minimum rehabilitation expenditure period for a building originally ends on or after April 1, 2020, and before December 31, 2020, the last day for the Owner to incur the minimum rehabilitation expenditures with respect to the building is postponed to December 31, 2020.

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

For purposes of § 42(j)(4)(E), if a low-income building has suffered a casualty loss and the reasonable period to restore by reconstruction or replacement ends on or after April 1, 2020, and before December 31, 2020, the last day for the Owner of the building to restore the loss by reconstruction or replacement is postponed to December 31, 2020.

D. REASONABLE RESTORATION PERIOD IN THE EVENT OF PRIOR MAJOR DISASTER

For purposes of section 8.02 of Rev. Proc. 2014-49, if a low-income building, due to a prior Major Disaster, has suffered a casualty loss that would have reduced its qualified basis and if the reasonable restoration period determined by the Agency for the building ends on or after April 1, 2020, and before December 31, 2020, the last day for the Owner of the building to complete the repair and restoration is postponed to December 31, 2020.

E. 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, the last day of a 12-month transition period for a qualified residential rental project that ends on or after April 1, 2020, and before December 31, 2020, is postponed to December 31, 2020.

F. 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 § 147(d) 2-year rehabilitation expenditure period for the bond ends on or after April 1, 2020, and before December 31, 2020, the last day of that period is postponed to December 31, 2020.

VI. GRANT OF RELIEF PURSUANT TO § 1.42-13(a)

A. INCOME RECERTIFICATIONS

An Owner of a low-income building is not required to perform income recertifications under § 1.42-5(c)(1)(iii) in the period beginning on April 1, 2020, and ending on December 31, 2020. The Owner must resume the income recertifications as due under § 1.42-5(c)(1)(iii) after December 31, 2020.

B. COMPLIANCE-MONITORING

For purposes of § 1.42-5, an Agency is not required to conduct compliance-monitoring inspections or reviews in the period beginning on April 1, 2020, and ending on December 31, 2020. The Agency must resume compliance-monitoring inspections or reviews as due under § 1.42-5 after December 31, 2020.

C. COMMON AREAS AND AMENITIES

If an amenity or common area in a low-income building or project is temporarily unavailable or closed during some or all of the period from April 1, 2020 to December 31, 2020, in response to the COVID-19 pandemic, and not because of other noncompliance for § 42 purposes, this temporary closure does not result in a reduction of the eligible basis of the building.

D. EMERGENCY HOUSING FOR MEDICAL PERSONNEL AND OTHER ESSENTIAL WORKERS

If individuals who are medical personnel or other essential workers (as defined by State or local governments) provide services during the COVID-19 pandemic, then, for purposes of providing emergency housing from April 1, 2020, to December 31, 2020, 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.

VII. EFFECTIVE DATE

This notice is effective as of July 1, 2020.

VIII. EFFECT ON OTHER DOCUMENTS

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

IX. DRAFTING INFORMATION

The principal authors of this notice are Dillon Taylor and Michael J. Torruella Costa, Office of the Associate Chief Counsel (Passthroughs and Special Industries), and Timothy L. Jones and David White, Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice, contact Dillon Taylor or Michael J. Torruella Costa at (202) 317-4137 (not a toll-free number); contact Timothy L. Jones or David White at (202) 317-6980 (not a toll-free number).