Part III-Administrative, Procedural and Miscellaneous

Relief from Certain Low-Income Housing Credit Requirements in the State of Ohio Due to Post-Hurricane Severe Storms and Flooding

Notice 2004-75

The Internal Revenue Service is suspending certain income limitation requirements under § 42 of the Internal Revenue Code for certain low-income housing credit properties in Ohio as a result of the devastation caused by severe storms and flooding from the remnants of Hurricanes Frances and Ivan. 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 September 19, 2004, the President declared a major disaster for the State of Ohio as a result of severe storms and flooding from the remnants of Hurricanes Frances and Ivan. This declaration was made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Title 42 U.S.C. 5121-5206 (2000 & Supp. I 2001). Subsequently, the Federal Emergency Management Agency (FEMA) designated counties for Individual Assistance.

The State of Ohio has requested that the Service allow owners of low-income housing credit projects located in Ohio counties designated for Individual Assistance by FEMA (designated counties) to provide temporary housing in vacant units to individuals displaced because their homes were destroyed or damaged as a result of the devastation caused by the severe storms and flooding from the remnants of Hurricanes Frances and Ivan (displaced individuals). The State of Ohio has 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.

SUSPENSION OF INCOME LIMITATIONS

Because of the significant damage to housing caused by the post-hurricane severe storms and flooding in designated counties in the State of Ohio, the Service has determined that it is appropriate to temporarily suspend certain income limitation requirements under § 42 for qualified low-income housing projects located in designated counties that are beyond the first year of the credit period under § 42(f)(1). The suspension will apply to low-income housing projects, approved by the Ohio Housing Finance Agency, in which vacant units are rented to individuals displaced by the post-hurricane severe storms and flooding. The Ohio Housing Finance Agency will determine the appropriate period of temporary housing for each project, not to extend beyond September 30, 2005.

During the temporary housing period established by the Ohio Housing Finance Agency, the status of a vacant unit (that is, market rate or low-income for purposes of § 42) 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 and 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). 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. All other rules and requirements of § 42 will continue to apply.

At the end of the temporary housing period established by the Ohio Housing Finance Agency, the applicable income limitations contained in § 42(g)(1), the available unit rule under § 42(g)(2)(D)(ii), and the requirement to make reasonable attempts to rent vacant units to low-income individuals resume.

The suspension of income limitations is subject to the requirements listed below.

REQUIREMENTS FOR SUSPENSION OF INCOME LIMITATIONS

To qualify for the suspension of income limitations, the project owner must meet all of the following requirements:

<u>(1) Major Disaster Area</u>

The displaced individual must have resided in an Ohio county designated for Individual Assistance by FEMA as a result of the severe storms and flooding from the remnants of Hurricane Frances or Hurricane Ivan. Additionally, the low-income housing project providing temporary housing to the displaced individual must be located in an Ohio county designated for Individual Assistance by FEMA as a result of the severe storms and flooding from the remnants of Hurricane Frances or Hurricane Ivan.

<u>(2) Approval of Ohio Housing Finance Agency</u>

The project owner must obtain approval from the Ohio Housing Finance Agency to obtain the relief described in this notice. The Ohio Housing Finance Agency will determine the appropriate period of temporary housing for each project, not to extend beyond September 30, 2005.

(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 home, social security number, and a statement signed under penalties of perjury by the displaced individual that, because of damage to the individual's home in an Ohio county designated for Individual Assistance by FEMA as a result of the severe storms and flooding, the individual requires temporary housing. The owner must also certify the date the individual began temporary occupancy and the date the project will discontinue providing temporary housing as established by the Ohio Housing Finance Agency. The certifications and recordkeeping for displaced individuals must be maintained as part of the annual compliance monitoring process with the Ohio Housing Finance Agency.

(4) Rent Restrictions

Rent 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 September 19, 2004 (the date of the President's major disaster declaration in Ohio as a result of the severe storms and flooding).

PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1907.

An 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 titled "REQUIREMENTS FOR SUSPENSION OF INCOME LIMITATIONS," under "(3) Certifications and Recordkeeping." This information is required to enable the Service and the Ohio Housing Finance Agency to verify that the individuals obtaining temporary housing in approved low-income housing projects are displaced from their homes in an Ohio county designated for Individual Assistance by FEMA as a result of the severe storms and flooding.

This information will be used in the Ohio Housing Finance Agency's compliance monitoring process. The collection of information is required to obtain a benefit. The likely respondents are individuals, businesses, and nonprofit institutions.

The estimated total annual recordkeeping burden is 63 hours.

The estimated annual burden per recordkeeper is approximately 15 minutes. The estimated number of recordkeepers is 250.

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).