

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 I, §§ 42 and 142; 1.42-5, 1.42-6, 1.42-13, 1.42-14)

Rev. Proc. 2014-49

SECTION 1. PURPOSE

In the context of a Major Disaster, this revenue procedure provides temporary relief from certain requirements of § 42 of the Internal Revenue Code for Agencies and Owners. 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. For low-income buildings financed with exempt facility bonds under § 142, see also Rev. Proc. 2014-50, I.R.B. 2014-37, which provides for emergency housing relief under § 142(d) in response to Major Disasters. This revenue procedure modifies and supersedes Rev. Proc. 2007-54, 2007-2 C.B. 293. See section 5 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.¹ 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.²

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

SECTION 3. CHANGES

.01 Rev. Proc. 2007-54 established temporary relief from certain requirements of § 42 for Owners and Agencies in Major Disaster Areas. In particular, Rev. Proc. 2007-54 (1) provided relief from the carryover allocation provisions; (2) clarified the consequences if an Owner failed to restore a building within a reasonable restoration

¹ FEMA generally publishes this designation in a notice in the Federal Register.

² For relief under § 42, see e.g., Notice 2012-7, 2012-4 I.R.B. 308 (flooding in Iowa); Notice 2012-68, 2012-48 I.R.B. 574 (Hurricane Sandy); Notice 2013-40, 2013-25 I.R.B. 1254, and Notice 2013-47, 2013-31 I.R.B. 120 (severe storms and tornadoes in Oklahoma); and Notice 2013-64, 2013-44 I.R.B. 438 (weather-related disasters in Colorado). For relief under § 142(d), see Notice 2013-9, 2013-9 I.R.B. 529 (Hurricane Sandy); Notice 2013-39, 2013-25 I.R.B. 1252, and Notice 2013-47(severe storms and tornadoes in Oklahoma); and Notice 2013-63, 2013-44 I.R.B. 436 (weather-related disasters in Colorado).

period; (3) provided relief from certain compliance monitoring requirements; (4) allowed Agencies to provide relief for buildings severely damaged or destroyed in the first year of the credit period; and (5) described the amount of credit allowable for a restored building.

.02 Rev. Proc. 2007-54 also allowed Owners to rely on the self-certification of income eligibility of an individual who was displaced from his or her principal residence as a result of a Major Disaster and whose principal residence was in a city, county, or other local jurisdiction designated for Individual Assistance by FEMA as a result of the Major Disaster. The self-certification could not extend for more than four months beyond the date of the President's Major Disaster declaration. During the four-month self-certification period, the self-certified tenant was deemed a qualified low-income tenant. After the four-month self-certification period, the self-certified tenant was treated as a qualified low-income tenant only if the Owner obtained all documentation required under § 42 to support the tenant's continued status as a qualified low-income individual.

.03 The key modifications to Rev. Proc. 2007-54 in this revenue procedure include: (1) changing the reasonable restoration period for recapture relief and the tolling period for severely damaged, destroyed, or uninhabitable buildings in the first year of the credit period; (2) in determining qualified basis, using the building's qualified basis at the end of the taxable year immediately preceding the first day of the incident period as determined by FEMA, rather than at the end of the taxable year preceding the President's Major Disaster declaration; (3) incorporating a temporary suspension of certain income limitations for Displaced Individuals; (4) eliminating the need for self-

certification of income eligibility; (5) permitting an Agency to allow an Owner within its jurisdiction to provide emergency housing relief to Displaced Individuals from other jurisdictions; (6) describing the consequences of providing emergency housing relief in the first year of the credit period and after the first year of the credit period; and (7) modifying the safe harbor relating to the amount of credit allowable to a restored building to provide relief in circumstances where the restoration cost is less than the eligible basis cost.

SECTION 4. SCOPE

This revenue procedure applies when the President has declared a Major Disaster. This revenue procedure applies to Displaced Individuals and to all § 42 buildings (including buildings financed with exempt facility bonds under § 142), Agencies, and Owners both inside and outside States containing a Major Disaster Area.

SECTION 5. DEFINITIONS

The following definitions apply for this revenue procedure.

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

.02 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.

.03 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.

.04 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.

.05 Market-Rate Unit. A Market-Rate Unit is a unit that is not a low-income unit under § 42(i)(3).

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

.07 Project. A Project is a project that is subject to low-income requirements under § 42.

.08 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 Agency under section 12.02 of this revenue procedure.

SECTION 6. RELIEF FOR CARRYOVER ALLOCATIONS

.01 A carryover allocation is defined in § 1.42-6(a)(1) 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).

.02 If an Owner has a carryover allocation for a building located in a Major Disaster Area and the incident period for the Major Disaster began prior to the deadline

in § 42(h)(1)(E), the Agency may grant the Owner an extension under section 7 of this revenue procedure. If the Agency grants such an extension, the Service will treat the Owner as having satisfied the 10-percent basis requirement of § 42(h)(1)(E)(ii) if the Owner incurs more than 10 percent of the Owner's reasonably expected basis in the building (land and depreciable basis) no later than the expiration of that extension. See § 1.42-6 for specific rules on carryover allocations.

.03 If an Owner has a carryover allocation for a building located in a Major Disaster Area and the Major Disaster occurs on or after the date of the carryover allocation, the Agency may grant the Owner an extension under section 7 of this revenue procedure. If the Agency grants such an extension, the Service will treat the Owner as having satisfied the placed in service requirement of § 42(h)(1)(E)(i) if the Owner places the building in service no later than the expiration of that extension. See § 1.42-6 for specific rules on carryover allocations.

.04 If either section 6.04(1) or section 6.04(2) of this revenue procedure applies, then the Service will treat the carryover allocation as a credit returned to the Agency on the day following the end of the extension period granted under the authority of section 6.02 of this revenue procedure, provided the Agency complies with the requirements of § 1.42-14(d)(3).

(1) Under the procedure described in section 7 of this revenue procedure, an Owner obtains the relief provided in section 6.02 of this revenue procedure but fails to satisfy the 10-percent basis requirement of § 42(h)(1)(E)(ii) before the expiration of the

extension period granted under the authority of section 6.02. See § 1.42-14 for specific rules on returned credits.

(2) Under the procedure described in section 7 of this revenue procedure, an Owner obtains the relief provided in section 6.03 of this revenue procedure but fails to satisfy the placed in service requirement of § 42(h)(1)(E)(i) before the expiration of the extension period granted under the authority of section 6.03.

SECTION 7. PROCEDURE TO OBTAIN CARRYOVER ALLOCATION RELIEF

.01 An Owner may obtain the carryover allocation relief described in section 6.02 or 6.03 of this revenue procedure only if the Owner receives approval for the relief from the Agency that issued the carryover allocation pursuant to the procedures in this section 7.

.02 The Agency may approve the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure only for Projects whose Owners cannot reasonably satisfy the deadlines of § 42(h)(1)(E) because of a Major Disaster. Depending on the extent of the damage in a Major Disaster Area, an Agency may make this determination on an individual Project basis or determine that all Owners or a particular group of Owners in the Major Disaster Area warrant the relief provided in sections 6.02 and 6.03 of this revenue procedure. An extension under section 6.02 must not extend beyond six months after the date the Owner would otherwise be required to meet the 10-percent requirement of § 42(h)(1)(E)(ii). An extension under section 6.03 must not extend beyond December 31 of the year following the end of the two-year period described in § 42(h)(1)(E)(i). See § 1.42-6 for specific rules on

carryover allocations. Based upon all facts and circumstances, an Agency has the discretion to provide shorter periods of relief than the maximum periods allowed by this section 7.02, or no relief at all.

.03 An Agency that chooses to approve the relief provided in sections 6.02 and 6.03 of this revenue procedure must do so before filing the Form 8610, Annual Low-Income Housing Credit Agencies Report, that covers the preceding calendar year. The Form 8610 is due by February 28 of the year following the year to which the Form 8610 applies.

.04 An Agency that approves the relief under sections 6.02 and 6.03 of this revenue procedure must report to the Service the Projects granted relief by attaching the documentation required in the instructions to Form 8610. The Agency should identify only those buildings, including buildings granted relief in January and February of the year in which the Agency files the Form 8610, that received the Agency's approval of the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure since the Agency last filed the Form 8610.

SECTION 8. RECAPTURE RELIEF

.01 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).

.02 If the building's qualified basis is reduced by reason of a casualty loss, then under § 42(j)(4)(E), a building is not subject to recapture to the extent the loss is restored by reconstruction or replacement within a reasonable restoration period. The Agency must determine what constitutes a reasonable restoration period in the case of a Major Disaster that causes a reduction in qualified basis that would result in recapture or loss of credit. 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.

.03 To determine the credit amount allowable during the reasonable restoration period for a building described in section 8.02 of this revenue procedure, 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.

.04 If the Owner fails to restore the building within the reasonable restoration period determined by the Agency, then section 8.01 of this revenue procedure applies to the Owner and section 8.03 of this revenue procedure does not apply. The credit amount allowable, if any, after the Major Disaster is determined using the building's qualified basis at the end of each year of the credit period.

.05 Section 1.42-5(c)(1) requires an Owner to report any reduction in qualified basis to the Agency. This requirement applies regardless of whether an Owner obtains the relief provided in section 8.02 of this revenue procedure.

.06 As part of its review procedure adopted under § 1.42-5(c)(2), an Agency must determine whether the Owner described in section 8.01 of this revenue procedure has restored the building's qualified basis by the end of the reasonable restoration period established by the Agency. The Agency must report on Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, any failure to restore qualified basis within the reasonable restoration period.

SECTION 9. COMPLIANCE MONITORING RELIEF

.01 An Agency may extend the due date for its scheduled compliance reviews for up to one calendar year from the date of the building's restoration and placement again into service.

.02 The extension permitted under section 9.01 of this revenue procedure does not extend the compliance monitoring deadlines for Owners in Major Disaster Areas. If an Agency discovers that an Owner has failed to comply with the rules of § 42 because of a Major Disaster, the Agency must report the noncompliance on Form 8823 and describe how the Major Disaster contributed to the noncompliance.

SECTION 10. BUILDINGS IN THE FIRST YEAR OF THE CREDIT PERIOD

.01 For buildings during the first year of the credit period that are severely damaged or destroyed in a Major Disaster Area, or uninhabitable as a result of a Major Disaster, an Agency has the discretion to treat the allocation as a returned credit to the Agency in accordance with the requirements of § 1.42-14(d)(3), or may toll the beginning of the first year of the credit period under § 42(f)(1). The tolling period must not extend beyond the end of the 25th month following the close of the month of the

Major Disaster declaration. Owners may not claim any low-income housing credit during the restoration period of these first-year buildings.

.02 An Agency that provides the relief in section 10.01 of this revenue procedure must report to the Service those Projects granted relief by attaching the required documentation as provided in the instructions to Form 8610.

SECTION 11. AMOUNT OF CREDIT ALLOWABLE TO A RESTORED BUILDING

.01 No additional credit for restoration expenditures. If a Major Disaster causes a building to suffer a reduction in qualified basis as described in section 8.01 of this revenue procedure in a taxable year during the compliance period, then § 42 does not allow the Owner to receive any additional credit amounts for costs to restore the building's qualified basis.

.02 Additional credits allowed for rehabilitation expenditures. As a result of either an allocation by an Agency or financing by exempt facility bonds, an Owner may receive an additional amount of credits for rehabilitation expenditures (as described in § 42(e)(2)) if those expenditures are used for rehabilitation and not for restoring qualified basis. A taxpayer may treat as rehabilitation expenditures any expenditures that are described in § 42(e)(2) and that exceed the amount expended for restoration. The amount expended for restoration is generally determined under all of the relevant facts and circumstances. However, if a Major Disaster causes a reduction in qualified basis, the Owner may alternatively treat as restoration expenditures the amount of—

(1) The building's eligible basis immediately before the Major Disaster;
multiplied by

(2) The excess, if any, of—

a. 1.0 over

b. The fraction whose numerator is the building's post-Major Disaster qualified basis (determined for this purpose immediately after the Major Disaster) and whose denominator is the building's pre-Major Disaster qualified basis (determined for this purpose immediately before the Major Disaster).

.03 Example.

(a) Facts. Immediately before the Major Disaster described below, a low-income building contained 60 Market-Rate Units and 40 low-income units. Thus, the unit fraction under § 42(c)(1)(C) was 40/100. The eligible basis of the building was \$10,000,000. Based on the unit fraction, the qualified basis was \$4,000,000, which is the unit fraction multiplied by the eligible basis. A Major Disaster rendered 10 of the low-income units and several of the Market-Rate Units uninhabitable and damaged some building common areas. As a result of this damage to the common areas and to the residential units, the building's eligible basis was reduced to \$8,500,000. Thus, immediately after the Major Disaster, the qualified basis is \$2,550,000, which is the unit fraction of 30/100 (the unit fraction immediately after the Major Disaster), multiplied by \$8,500,000 (the eligible basis at that time).

(b) Analysis. Under section 11.02(2) of this revenue procedure, the restoration amount is \$3,625,000, and the building owner may treat any amount expended in excess of the restoration amount as rehabilitation expenditures (assuming the requirements of § 42(e) are met). The restoration amount is derived as the amount of—

a. \$10,000,000, which is the building's eligible basis immediately before the Major Disaster; multiplied by

b. 0.3625, which is the excess of—

i. 1.0 over

ii. 0.6375, which is the fraction whose numerator is \$2,550,000 (the qualified basis immediately after the Major Disaster) and whose denominator is \$4,000,000 (the qualified basis immediately before the Major Disaster).

SECTION 12. EMERGENCY HOUSING RELIEF — REQUIREMENTS AND RESTRICTIONS

.01 Requirements for Relief. For an Owner to use the relief provided in section 13 of this revenue procedure, the conditions in this section 12 must be satisfied.

.02 Agency Approval.

(1) The Agency provides written approval to the Owner 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) For low-income buildings financed with exempt facility bonds under § 142, see section 5.02 of Rev. Proc. 2014-50, I.R.B. 2014-37.

.03 Protection of Existing Tenants. No existing tenant whose income is, or is treated as, at or below an applicable income limit under § 42(g)(2) 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 Owner complies with the recordkeeping requirements in section 14 of this revenue procedure.

.05 Rent Restrictions. Gross rents for the low-income units that house Displaced Individuals do not exceed the maximum gross rent for those units that would apply under § 42(g)(2).

.06 Project Meets All Remaining Requirements. Except as expressly provided in this revenue procedure, a Project meets all other rules and requirements of § 42.

SECTION 13. 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 Owner chooses not to provide emergency housing relief under sections 12, 13, and 14 of this revenue procedure, then all of the rules under § 42 apply.

(2) If an Owner chooses to provide emergency housing relief under sections 12, 13, and 14 of this revenue procedure then –

(A) The Owner 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 Owner wishes to accept the individual as a tenant, the Owner may either accept the Displaced Individual as a low-income tenant applying all the rules under § 42 or provide emergency housing relief to the Displaced Individual under sections 12, 13, and 14 of this revenue procedure; and

(C) If a Displaced Individual has not demonstrated qualification as low income and the Owner wishes to accept the individual as a tenant, the Owner 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 12, 13, and 14 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 § 42(i)(3)(B)(i).

.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 § 42(g)(2)(D)(ii), an Owner 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.

.04 Treatment of Units in the First Year of the Credit Period. If a Displaced Individual begins occupancy of a unit at a time that is within both the Temporary Housing Period and the first year of the credit period under § 42(f)(1), then during the Temporary Housing Period, while occupied by the Displaced Individual, the unit is treated as a low-income unit for the following purposes:

- (1) Determining the Project's qualified basis under § 42(c)(1); and
- (2) Meeting the Project's 20-50 test under § 42(g)(1)(A), 40-60 test under § 42(g)(1)(B), or 25-60 test under §§ 42(g)(4) and 142(d)(6) for New York City, as

applicable. See section 13.06 of this revenue procedure for the treatment of a unit vacated by a Displaced Individual.

.05 Treatment of Units After the First Year of the Credit Period. If a Displaced Individual begins occupancy of a unit during the Temporary Housing Period but after the first year of the credit period under § 42(f)(1), then the unit retains the status it had immediately before that occupancy. That is –

(1) The actual income of the Displaced Individual occupying the unit is disregarded during the Temporary Housing Period for purposes of § 42;

(2) If a unit is a low-income unit, a Market-Rate Unit, or a unit never previously occupied, 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; and

(3) The income of the Displaced Individual occupying the unit does not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis under § 42(c)(1), nor does it affect the satisfaction of the 20-50 test under § 42(g)(1)(A), 40-60 test under § 42(g)(1)(B), or 25-60 test under §§ 42(g)(4) and 142(d)(6) for New York City, as applicable.

.06 Treatment of a Unit Vacated by a Displaced Individual. 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 sections 13.04 or 13.05 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 13.04 or 13.05 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 § 42.

.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 13.07(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 § 42(g)(1) 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 § 42 as permitted by section 13.01(2)(B) of this revenue procedure, then all the rules under § 42 apply to the Displaced Individual, including § 42(g)(2)(D)(ii).

.08 No Recapture. The emergency housing of Displaced Individuals in low-income units during the Temporary Housing Period (and, if applicable, the 60-day correction period under section 13.07 under this revenue procedure) does not cause the

building to suffer a reduction in qualified basis (which would cause the recapture of low-income housing credits).

SECTION 14. EMERGENCY HOUSING RELIEF — RECORDKEEPING

.01 Owners must maintain certain information concerning each Displaced Individual temporarily housed in the Project under sections 12 and 13 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 Owner must maintain a record both of the Agency's approval of the Project's use for Displaced Individuals and of the approved Temporary Housing Period. The Owner must report to the Agency 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 Owner 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 Owner must maintain the records described in this section as part of the annual compliance monitoring process with the Agency imposed by § 42 and provide this information to the Service upon request.

SECTION 15. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies and supersedes Rev. Proc. 2007-54, 2007-2 C.B. 293.

SECTION 16. EFFECTIVE DATE

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

SECTION 17. 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 sections 6, 7, 8, 9, 10, 12, 13, and 14. This information is required to enable the Service to verify whether the Owners 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 1,750 hours.

The estimated annual burden per recordkeeper is approximately 30 minutes. The estimated number of recordkeepers is 3,500.

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 18. DRAFTING INFORMATION

The principal author of this revenue procedure is David Selig of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Mr. Selig at (202) 317-4137 (not a toll free call).

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)

Rev. Proc. 2014-50

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.¹ 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.²

.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 FEMA generally publishes this designation in a notice in the Federal Register.

² For relief under § 42, see e.g., Notice 2012-7, 2012-4 I.R.B. 308 (flooding in Iowa); Notice 2012-68, 2012-48 I.R.B. 574 (Hurricane Sandy); Notice 2013-40, 2013-25 I.R.B. 1254, and Notice 2013-47, 2013-31 I.R.B. 120 (severe storms and tornadoes in Oklahoma); and Notice 2013-64, 2013-44 I.R.B. 438 (weather-related disasters in Colorado). For relief under § 142(d), see Notice 2013-9, 2013-9 I.R.B. 529 (Hurricane Sandy); Notice 2013-39, 2013-25 I.R.B. 1252, and Notice 2013-47 (severe storms and tornadoes in Oklahoma); and Notice 2013-63, 2013-44 I.R.B. 436 (weather-related disasters in Colorado).

(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).