

November 12, 2012

Legal Alert: Recent Temporary Changes to Rules for Projects Financed with Low Income Housing Tax Credits

The Treasury Department and the Internal Revenue Service (the “IRS”) recently agreed to waive low-income tax credit rules that prohibit owners of low-income housing from providing housing to victims of Hurricane Sandy who do not qualify as low-income. These changes will expand the availability of housing for disaster victims and their families.

Overview

Due to the widespread devastation to housing caused by Hurricane Sandy, the Treasury Department and the IRS will temporarily suspend certain requirements under § 42 of the Internal Revenue Code (the “Code”) relating to income limitation requirements and non-transient requirements for qualified low-income housing projects that provide housing to victims of Hurricane Sandy.

The IRS has determined that state housing agencies (“Agencies”) may provide approval to project owners in their respective states to provide temporary emergency housing for displaced individuals under guidelines published in IRS Notice 2012-68 <http://www.irs.gov/pub/irs-drop/n-12-68.pdf>. In New York State there are three sub-allocating agencies that issue low-income housing tax credits: The City of New York Department of Housing Preservation and Development (“HPD”), the New York State Division of Housing and Community Renewal (“DHCR”) and the New York State Housing Finance Agency (“HFA”). A displaced individual is eligible for such temporary housing if they resided in a jurisdiction designated for individual assistance and have been displaced because their residence was destroyed or damaged as a result of the devastation caused by Hurricane Sandy. The President has declared that major disasters exist in Connecticut, New York and New Jersey, making federal funding available to affected individuals in designated counties through the Federal Emergency Management Agency (“FEMA”). However, the Service has determined that approval for such temporary emergency housing may be given to projects located in any state, regardless of whether a major disaster declaration has been issued for that state.

Income Limitations

The Service has temporarily suspended income limitation requirements for qualified low-income housing projects. The suspension applies to low-income housing projects which are approved by the applicable Agency with jurisdiction over the project and in which vacant units are available for displaced individuals. The applicable Agency will determine the

appropriate period of temporary housing for each project, not to extend beyond November 30, 2013 (the “Temporary Housing Period”).

Status of Units

A displaced individual temporarily occupying a unit during the first year of the credit period under § 42(f)(1) of the Code will be deemed a qualified low-income tenant for purposes of determining the project’s qualified basis. After the end of the Temporary Housing Period, a displaced individual will no longer be deemed a qualified low-income tenant.

The status of a vacant unit after the first year of the credit period that becomes temporarily occupied by a displaced individual during the Temporary Housing Period remains the same as the unit’s status before the displaced individual moved in. The fact that a vacant unit becomes occupied by a displaced individual will not affect the calculations relating to determining the building’s qualified basis under § 42(c)(1)(B) of the Code.

Additionally, the project owner is not required during the Temporary Housing Period to make attempts to rent units that house displaced individuals to low-income individuals.

Non-Transient Requirements

The non-transient use requirement of § 42(i)(3)(B)(i) will not apply to any unit providing temporary housing to a displaced individual during the Temporary Housing Period.

Eligibility Requirements

To qualify for the relief discussed above, the applicable project owner must meet all of the following criteria:

- The applicable displaced individual must have resided in a jurisdiction designated for Individual Assistance by FEMA as a result of the devastation caused by Hurricane Sandy;
- The project owner must obtain approval from the applicable Agency (HPD, DHCR or HFA, as applicable);
- The project owner is required to maintain and certify certain information concerning each displaced individual temporarily housed, specifically the following:
 - 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 a jurisdiction designated for Individual Assistance by FEMA as a result of the devastation caused by Hurricane Sandy, the individual requires temporary housing;
 - provide notice the applicable Agency that vacant units are available for rent to displaced individuals;
 - certify the date the displaced individual began temporary occupancy and the date the project will discontinue providing temporary housing as established by the applicable Agency;

- Rents for the low-income units that house displaced individuals must not exceed the existing rent-restricted rates for such low-income units; and
- Existing tenants in occupied low-income units cannot be evicted or have their tenancy terminated as a result of efforts to provide housing for displaced individuals.

Individuals and business owners who sustained losses can apply for assistance from FEMA by calling 1-800-621-FEMA (3362) via mobile device at m.fema.gov, or online at www.disasterassistance.gov. To read IRS Notice 2012-68 in full, please visit <http://www.irs.gov/pub/irs-drop/n-12-68.pdf>.

This alert is meant to provide general information only, not legal advice. If you have questions about this alert, please contact Hedwig O'Hara at Lawyers Alliance for New York at (212) 219-1800 x 226 or visit our website at www.lawyersalliance.org for further information.

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