



Compliance Hot Topics

2018 HFA Institute - Washington, D.C.
January 10, 2018

James Rider
George Lydford

Priority Guidance Plan

2017-2018

- o Compliance-Monitoring Regulations.
- o Puerto Rico Disaster Relief.
- o Seeking input on potential projects.

Rev. Procs. 2014-49 and 2014-50

- o Rev. Proc. 2014-49 provides temporary relief from certain requirements of section 42 for Agencies and Owners as well as emergency housing relief for individuals who are displaced from their principal residences by a Major Disaster.
- o Rev. Proc. 2014-50 provides temporary relief from certain requirements of section 142(d) for Issuers and Operators of qualified residential rental properties financed with tax-exempt bonds.

Rev. Proc. 2007-54

- o Provided relief from the carryover allocation provisions;
- o Clarified the consequences if an Owner failed to restore a building within a reasonable restoration period;
- o Provided relief from certain compliance monitoring requirements;
- o Allowed Agencies to provide relief for buildings severely damaged or destroyed in the first year of the credit period;
- o Described the amount of credit allowable for a restored building; and
- o Allowed Owners to rely on the self-certification of income.

Key Modifications to Rev. Proc. 2007-54

o Rev. Proc. 2014-49:

- o Changes 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;
- o Uses the building's qualified basis at the end of the taxable year immediately preceding the first day of the incident period, rather than at the end of the taxable year preceding the President's Major Disaster declaration;
- o Incorporates a **temporary suspension of certain income limitations** for Displaced Individuals;
- o Eliminates the need for self-certification of income eligibility;
- o Permits an Agency to allow an Owner within its jurisdiction to provide emergency housing relief to Displaced Individuals from other jurisdictions;
- o Describes the consequences of providing emergency housing relief in the first year and after the first year of the credit period; and
- o Modifies the safe harbor relating to the amount of credit allowable to a restored building.

Key Definitions

- **Displaced Individual.** 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.
- **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
- **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.
- **Temporary Housing Period.** The period beginning on the first day of the incident period, as determined by FEMA, and ending on the date determined by the Agency.

Carryover Allocation Relief

- o Agencies can grant Owners an extension to satisfy the 10-percent basis requirement of section 42(h)(1)(E)(ii) and the placed in service requirement of section 42(h)(1)(E)(i).
- o The extension to meet the 10-percent basis requirement mustn't extend beyond 6 months after the date the Owner would otherwise have to meet the requirement.
- o The extension to meet the placed in service requirement mustn't extend beyond December 31st of the year following the end of the two-year period described in section 42(h)(1)(E)(i).

Recapture Relief

- o In the case of a Major Disaster, if a building's qualified basis is reduced by reason of a casualty loss after the first year of the credit period, then, under section 42(j)(4)(E), the building isn't subject to recapture to the extent the loss is restored by reconstruction or replacement within a reasonable restoration period.
- o Agencies must determine what constitutes a reasonable restoration period (it can't, however, extend beyond the end of the 25th month following the close of the month of the Major Disaster declaration).

Restoration and Rehabilitation Expenditures

- o Owners aren't allowed to receive additional credit amounts for restoration expenditures (*i.e.*, costs to restore a building's qualified basis).
- o Owners may receive additional credit amounts for rehabilitation expenditures (*i.e.*, any expenditures described in section 42(e)(2) and that exceed the amount expended for restoration).

Compliance Monitoring Relief

- o Agencies may extend the due date of scheduled compliance reviews for up to one calendar year from the date of a building's restoration and placement again into service.
- o Owners are subject to all existing compliance monitoring deadlines, and Agencies must report noncompliance if they discover that Owners have failed to comply with section 42 because of a Major Disaster.

Buildings in the First Year of the Credit Period

- 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, Agencies have the discretion to treat the allocations as returned credit, or toll the beginning of the first year of the credit period.
- The tolling period mustn't extend beyond the end of the 25th month following the close of the month of the Major Disaster declaration.

Emergency Housing Relief

o Requirements and Restrictions

- o Agencies must provide written approval to the Owners and specify the date on which the Temporary Housing Period ends.
- o Temporary Housing Period can't exceed 12 months from the end of the month in which the President declared the Major Disaster.
- o No existing tenants whose incomes are, or are treated as, at or below an applicable limit may be evicted solely to provide emergency housing relief for Displaced Individuals.
- o Owners must maintain certain information concerning each Displaced Individual temporarily housed under Rev. Proc. 2014-49.
- o Owners must maintain a record of Agency approval and the approved Temporary Housing Period.
- o Gross rents for the low-income units that house Displaced Individuals can't exceed the applicable maximum gross rents for those units.
- o Except as expressly provided in Rev. Proc. 2014-49, all other rules and requirements of section 42 apply.

Emergency Housing Relief

o Implementation

- o Rev. Proc. 2014-49 authorizes but doesn't require the provision of emergency housing relief to Displaced Individuals.
- o The occupancy of units by Displaced Individuals is treated as satisfying the non-transient use requirement.
- o Owners may disregard all units occupied by Displaced Individuals and apply the next available unit rule based solely on occupancy by persons who aren't Displaced Individuals.
- o Units occupied by Displaced Individuals during the first year of the credit period are treated as low-income units for determining qualified basis and meeting the applicable minimum set-aside.
- o Units occupied by Displaced Individuals after the first year of the credit period retain their status.
- o The status of units occupied by Displaced Individuals and the incomes of those individuals through the end of the Temporary Housing Period are re-evaluated if the individuals continue to occupy the units.
- o Housing Displaced Individuals in low-income units during the Temporary Housing Period doesn't cause the building to suffer a reduction in qualified basis and cause the recapture of credit.

Emergency Housing Relief

o Recordkeeping

- o Owners must obtain a statement signed by each Displaced Individual under penalties of perjury that contains the following:
 - o Name;
 - o Address of principal residence at the time of the Major Disaster;
 - o Social Security number; and
 - o Statement that the individual was displaced from their principal residence as a result of the Major Disaster and that their residence was located in a qualifying area.
- o Owners must maintain a record of the Agency's approval and the approved Temporary Housing Period.
- o After the Temporary Housing Period, Owners must provide the Agency with the names of the Displaced Individuals, the dates the individuals began occupancy, and the dates the individuals ceased occupancy (and, if applicable, the dates any units occupied by such individuals became occupied by subsequent tenants).
- o Owners must maintain these records as part of the annual compliance monitoring process with the Agency.

IRS – LIHC Contacts

- o Inquiries go to: *SBSE-LIHC
- o George Lydford, Senior Program Analyst, LIHC
 - o George.R.Lydford@irs.gov
 - o (480) 503-7287

Form 8609

- o IRS records maintained by BIN
- o Property address and owner name – use as cross reference
- o Part I – State Housing Agency
- o Part II – Building Owner
- o No LIHTC allowed if incomplete
- o Consistency and timeliness critical

Form 8610

- Number of Forms 8609 reconciles
- Check basic accuracy
- Explanations attached (*i.e.*, Line 14 not equal Line 15)
- Further clarification requested in rare instances

Form 8823

- o Submit timely
- o Accuracy important
- o Non-compliance issue
- o Back in compliance
- o No Rescinding Form 8823
- o IRS provides support

Compliance Hot Topics

- o Minimum Set-Aside
- o Eligible Basis
- o Extended Use Agreements
- o Carryover Allocations

Compliance Hot Topics

- o Residential Manager, or Maintenance Employee Units
- o Applicable Fraction
- o Casualty Losses

Compliance Overview

- o Forms Screened for Accuracy
- o Errors Corrected
- o Input to Database
- o Classification Process
- o Examinations
- o Technical Support