

October 11, 1994

1. Purpose

This revenue procedure informs owners of qualified low-income housing projects how to obtain the waiver of the annual income recertification (the waiver) provided in section 42(g)(8)(B) of the Internal Revenue Code.

2. Background

Section 42(g)(8)(B), as added by section 13142(b)(3) of the Revenue Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 416, 438, provides that, on application by the taxpayer, the Secretary may waive any annual recertification of tenant income for purposes of section 42(g), if the entire building is occupied by low-income tenants (a 100 percent low-income building). The term "low-income tenants" refers to the individuals occupying a rent-restricted unit in a qualified low-income housing project whose combined income satisfies the section 42(g)(1) income limitation elected by the owner of the project.

Except as otherwise provided in this revenue procedure, an owner of a 100 percent qualified low-income building (an owner) who satisfies the requirements in section 5 of this revenue procedure will be granted the waiver.

Section 1.42-5 of the Income Tax Regulations (the compliance monitoring regulations) requires an annual income certification for each low-income tenant in a qualified low-income building, even for those low-income tenants in a 100 percent low-income building. Section 1.42-5 provides the minimum requirements that a housing credit agency's (Agency) compliance monitoring procedure must contain to satisfy its compliance monitoring duties under section 42(m)(1)(B)(iii). Section 1.42-5(b)(1)(vi) provides that an Agency must require an owner to keep records for each qualified low-income building in the project that show for each year in the compliance period the annual income certifications of each low-income tenant per unit. Section 1.42-5(b)(1)(vii) provides that an Agency must require an owner to keep documents for each qualified low-income building in its project for each year in the compliance period that support each low-income tenant's income certification. Section 1.42-5(c)(1)(iii) provides that an Agency must require an owner to certify at least annually that, for the preceding 12-month period, the owner has received an annual income certification from each low-income tenant and documentation supporting that certification.

Section 42(g)(8)(B) in effect allows an owner an exemption from the requirements in paragraphs (b)(1)(vi), (b)(1)(vii), and (c)(1)(iii) of section 1.42-5. Under this revenue procedure, an Agency may exempt from those requirements a building to which the waiver applies. Section 1.42-5 prescribes only the minimum requirements an Agency's monitoring procedure must contain. Thus, an Agency may choose to require an owner to continue to satisfy the recordkeeping and certification requirements of section 1.42-5 for the annual recertification of tenants' annual income.

When applying for the waiver under section 42(g)(8)(B), an owner with more than one 100 percent low-income building in a project may submit a single application for all of the 100 percent low-income buildings in the project.

3. Scope

This revenue procedure applies to Agencies and owners of qualified low-income housing projects.

4. Effect of Obtaining a Waiver Under Section 42(g)(8)(B)

.01 An owner that obtains the waiver for its 100 percent low-income building by satisfying the requirements of this revenue procedure is not required to (1) keep records that show an annual income recertification of all the low-income tenants in the building who have previously had their annual income verified, documented, and certified; (2) maintain documentation to support that recertification; or (3) certify to its Agency that it has received this information.

.02 The waiver takes effect beginning with the compliance monitoring cycle following the date on which an owner sends, under section 5.02 of this revenue procedure, the statement described in section 5.01 of this revenue procedure to the Agency responsible for monitoring the owner's building. Once the waiver takes effect, it covers all subsequent compliance monitoring cycles during the building's compliance period.

.03 Obtaining the waiver will not prevent an owner from having to produce documentation to verify the owner's compliance with the rules and regulations of section 42 upon an examination of the owner's federal income tax return. In addition, except for the recordkeeping and certification requirement for the annual income recertification, obtaining the waiver will not prevent an owner from having to satisfy the requirements of the monitoring procedure adopted by the Agency responsible for monitoring the owner's building for compliance with the rules and regulations of section 42. Further, the Internal Revenue Service may revoke the waiver if the building ceases to be a 100 percent low-income building or if the Internal Revenue Service determines that an owner has violated section 42 in a manner that is sufficiently serious to warrant revocation.

.04 If an Agency exempts those 100 percent low-income buildings to which the waiver applies from the requirements of paragraphs (b)(1)(vi), (b)(1)(vii), and (c)(1)(iii) of section 1.42-5, the Agency's monitoring procedure will satisfy the requirements of section 1.42-5. Nonetheless, an Agency's monitoring procedure must continue to require that an owner satisfy the requirements in paragraphs (b)(1)(vi), (b)(1)(vii), and (c)(1)(iii) of section 1.42-5 upon a tenant's initial occupancy of any residential rental unit in the building.

.05 A 100 percent low-income building to which the waiver applies is included in the review requirements of section 1.42-5(c)(2).

5. Procedure for Applying for the Waiver Under Section 42(g)(8)(B)

An owner applying for the waiver for its 100 percent low-income building must –

.01 Send a written statement signed under penalty of perjury to the Internal Revenue Service Center, P.O. Box 245, Philadelphia, PA 19255 that includes the following:

(1) That the owner is applying for the annual income recertification waiver provided in section 42(g)(8)(B);

(2) That the owner has obtained a statement from the Agency responsible for monitoring the building that each residential rental unit in the building was a low-income unit under section 42 at the end of the most recent credit period for the building;

(3) That the owner understands that the Agency responsible for monitoring the building may continue to require an annual income recertification under the Agency's monitoring procedure and that the waiver does not exempt the owner from the recordkeeping and certification requirements of section 1.42-5 for the verification of the annual income of a tenant upon the tenant's initial occupancy of any unit in the building; and

(4) The building identification number (BIN) assigned to the building, the building or project name, the building or project address, and the owner's name and taxpayer identification number. This information should appear on the upper right hand corner of the statement.

.02 Simultaneously send a copy of the statement to the Agency responsible for monitoring the building.

.03 Keep a copy of the statement with the building's records. This copy must remain a part of the building's records regardless of any ownership transfer.

To use a tenant's signed, sworn statement to document the tenant's income from assets, see Rev. Proc. 94-65, this page, this Bulletin.

6. Effective Date

This revenue procedure is effective on and after October 11, 1994.

Drafting Information

The principal author of this revenue procedure is Jeffrey A. Erickson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Erickson at (202) 622-3040 (not a toll-free call).