

## IRS Housing Credit and Multifamily Housing Bond Regulatory Relief Available During COVID-19 Pandemic

*Last Updated January 13, 2022*

On January 11, 2022, IRS issued Notice 2022-05 providing temporary relief to state Housing Credit allocating agencies, owners, and residents of Housing Credit properties in response to the COVID-19 pandemic. This matrix compares the accommodations IRS provides in that notice to existing disaster relief IRS provides under Revenue Procedures 2014-49 and 2014-50, which are applicable in cases of a Presidentially-declared Major Disaster and to recommendations for COVID-19 guidance that NCSHA sent to IRS in [letters](#) on August 13, 2021 and October 15, 2021.

NOTE: Since the beginning of the COVID-19 pandemic, NCSHA has been in regular communication with IRS about the ongoing need for relief from certain Housing Credit program rules. Notice 2022-05 is the most recent in a series of Housing Credit Notices IRS has released in response to the pandemic, taking into consideration recommendations NCSHA has raised over this time period. Previous related IRS notices include Notice 2020-23, Notice 2020-53, and Notice 2021-12, as clarified by Notice 2021-17.

ISSUE	NCSHA Recommendation to IRS for COVID-19 Guidance (August 13, 2021 and October 15, 2021)	IRS Revenue Procedures 2014-49 and 2014-50	IRS Notice 2022-05 COVID-19 Guidance
<b>10% Test deadline as required in IRC §42(h)(1)(E)(ii)</b>	Extend for 12 months the deadline for the 10% Test for all properties with allocations before December 31, 2022. If applicable, the 12-month extension should begin as of the deadline as previously extended under Notice 2021-12. Thus, properties that already had an extension under that Notice should have an additional 12-month extension (total of 24 months).	6-month extension for properties in Major Disaster areas at discretion of Housing Credit agency; applicable only to properties with a 10% Test deadline on or after the date of the Major Disaster	<p>The 10% Test deadline for a project with an original 10% Test deadlines falling on or after April 1, 2020 and on or before December 31, 2020 is two years from the original deadline.</p> <p>The 10% Test deadline for a project with an original 10% Test deadlines falling on or after January 1, 2021 and before December 31, 2022 is December 31, 2022.</p>

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<b>Rehabilitation expenditure deadline as required in IRC §42(e)(3) and §42(e)(4)</b>	Extend for 12 months for projects with allocations on or before December 31, 2022. If applicable, the 12-month extension should begin as of the deadline as previously extended under Notice 2021-12. Thus, properties that already had an extension under that Notice should have an additional 12-month extension (total of 24 months).	N/AP	<p>The rehabilitation expenditure period deadline for a project with an original minimum rehabilitation expenditure period deadline falling on or after April 1, 2020 and on or before December 31, 2021 is 18 months from the original deadline.</p> <p>The rehabilitation period deadline for a project with an original minimum rehabilitation expenditure period deadline falling on or after January 1, 2022 and on or before June 30, 2022 is June 30, 2023.</p> <p>The rehabilitation period deadline for a project with an original minimum rehabilitation expenditure period deadline falling on or after July 1, 2022 and on or before December 31, 2022 is 12 months from the original deadline.</p> <p>The rehabilitation period deadline for a project with an original minimum rehabilitation expenditure period deadline falling on or after January 1, 2023 and on or before December 30, 2023 is December 31, 2023.</p>
<b>Placed in service deadline as required in IRC §42(h)(1)(E)(i)</b>	Extend by 12 months for all developments allocated Credits in calendar years 2018-2022. If applicable, the 12-month extension should begin as of the deadline as previously extended under Notice 2021-12. Thus, properties that already had an extension under that Notice should have an additional 12 months (total of 24 months)	12-month extension for properties in Major Disaster areas at discretion of Housing Credit agency; applicable only to properties receiving a carryover allocation on or before the date of the Major Disaster	<p>The placed-in-service deadline for a project with an original placed-in-service deadline on December 31, 2020 is December 31, 2022.</p> <p>The placed-in-service deadline for a project with an original placed-in-service deadline on December 31, 2021 and original 10% Test deadline before April 1, 2020 is December 31, 2022.</p> <p>The placed-in-service deadline for a project with an original placed-in-service deadline on December 31, 2021 and an original 10% test deadline on or after April 1, 2020 and on or before December 31, 2020 is December 31, 2023.</p> <p>The placed-in-service deadline for a project with an original place-in-service deadline on December 31, 2022 (and an original 10% test deadline in 2021) is December 31, 2023.</p>

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<b>Year-end restoration period deadline for properties suffering a casualty loss in 2020 <u>not</u> due to a Major Disaster</b>	Extend for 12 months the year-end restoration period deadline for properties suffering a casualty loss, regardless of whether or not the loss is due to a Major disaster. If applicable, the 12-month extension should begin at the deadline as previously extended under Notice 2021-12. Thus, properties that already had an extension under that Notice should have an additional 12 months (total of 24 months)	N/AP	<p><b>Notice 2022-05 treats casualty loss, regardless of whether or not the loss occurred due to a Major disaster, the same way.</b></p> <p>If a low-income building suffers a casualty loss for any reason causing qualified basis to be reduced, and the original deadline to restore the loss by reconstruction or replacement ends on or after April 1, 2020, the new reconstruction or replacement deadline is the sooner of 18 month from the original deadline or December 31, 2022. State agencies may require a shorter extension or no extension at all.</p>
<b>Restoration period allowed under IRS Revenue Procedures 2014-49 and 2014-50 for casualty loss due to Major Disaster</b>	See above.	Allows Agencies to determine the reasonable restoration period for casualty loss due to Major Disaster, not to extend beyond the end of the 25 <sup>th</sup> month following the month of the disaster declaration	See above.

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<b>Satisfying occupancy obligations under §42(f)</b>	Allow any increase in the number of low-income units as of the close of the six-month period following the close of the first year of the credit period to projects for which the close of the first year of the credit period is on or before December 31, 2022.	N/AP	If the close of the first year of the credit period with respect to a building is on or after April 1, 2020 and on or before December 31, 2022, the qualified basis for the building for the first year of the credit period is calculated by taking into account any increase in the number of low-income units by the close of the 6-month period following the close of that first year.
<b>Noncompliance corrective action periods</b>	At the discretion of the state agency, continue to allow an extension of up to 12 months for noncompliance corrective action period deadlines.	N/AP	Original correction periods ending on or after April 1, 2020 and before December 31, 2021 are extended by 12 months, but not beyond December 31, 2022.  Original correction periods ending at any point in 2022 are extended to December 31, 2022. The state agency may require a shorter extension or provide no extension at all.
<b>Tenant file reviews as required in IRS regulation 1.42-5</b>	Extend the waiver of tenant file reviews until December 31, 2021.  Modify the reasonable notice period to allow agencies to provide owners with 30 days notice before a tenant file review rather than the 15-day period otherwise allowed.		Waiver of required compliance monitoring tenant file reviews otherwise scheduled from April 1, 2020 until December 31, 2021; Housing Credit agencies must resume these compliance requirements by January 1, 2022, but is not required to make up tenant file reviews missed during the waiver period.  Between April 1, 2020 and December 31, 2022, agencies may consider a period of up to 30 days as reasonable notice to owners before completing tenant file reviews. Beginning January 1, 2023, the 15-day reasonable notice period resumes.

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<b>Physical inspections as required in IRS regulation 1.42-5</b>	Extend the waiver of compliance monitoring physical inspections until December 31, 2022.	N/AP	<p>Waiver of required compliance monitoring physical inspections otherwise scheduled from April 1, 2020 until June 30, 2022. State agencies, in consultation with public health experts, may extend this waiver as needed, and may apply such extension statewide, to specific areas of the state, or on a project-by-project basis depending on varying rates of transmission. Such extension of the waiver may not go beyond December 31, 2022. Agencies must resume physical inspections upon the expiration of the waiver, and are not required to make up physical inspections missed during the waiver period.</p> <p>Between April 1, 2020 and December 31, 2022, agencies may consider a period of up to 30 days as reasonable notice to owners before performing a physical inspection. Beginning January 1, 2023, the 15-day reasonable notice period resumes.</p>
<b>Closure of property amenities and common space facilities</b>	Allow that temporary closure of amenities and common spaces due to the pandemic do not negatively impact property eligible basis until December 31, 2022.	N/AP	Closures during the time period from April 1, 2020 to December 31, 2022 in response to the COVID-19 pandemic and not because of other noncompliance do not result in reduction of eligible basis. State agencies may deny any application of this waiver or limit the waiver to partial closure, or to limited or conditional access to an amenity or common area.
<b>QAP hearings under §42(m)(1)(A)</b>	Permanently allow Housing Credit agencies to satisfy QAP public approval requirements using telephonic hearings, irrespective of the pandemic.	N/AP	Housing Credit agencies may satisfy QAP public approval requirements using telephonic hearings for QAP hearings beginning April 1, 2020. The Notice does not provide a specific end date to this provision, but instead notes that Section 42(m)(1)(A) aligns Housing Credit QAP rules with those for public hearings for tax-exempt bonds under Section 147(f). IRS Revenue Procedure 2021-39 allows for telephonic hearings for public approval requirements under section 147(f) until March 31, 2022, thus until that date telephonic hearings for QAPs are also allowed. Should IRS extend this allowance for tax-exempt bonds, this would also allow an extension of the allowance for Housing Credit QAPs.

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Emergency housing for medical personnel and other essential workers	N/AP	N/AP, although Rev. Proc. 2014-49 and 2014-50 allow use of Housing Credit properties to house displaced individuals, which may include medical personnel and other essential workers under Notice 2021-12	Medical personnel and other essential workers, as defined by state or local governments, may be treated as displaced individuals under Rev. Proc. 2014-49 and 2014-50 from April 1, 2020 until December 31, 2022.
12-month transition period for tax-exempt bond financed projects to meet the set-aside for qualification as a residential rental project in Section 5.02 of IRS Rev. Proc. 2004-39	N/AP	N/AP	Transition periods ending on or after April 1, 2020 and before December 31, 2022 are extended until December 31, 2022.
2-year rehabilitation period for tax-exempt bonds used to provide qualified residential rental projects under §147(d)	N/AP	N/AP	Original rehabilitation periods ending on or after April 1, 2020 and before December 31, 2023 are extended to the earlier of 18 months from the original due date or December 31, 2023.