

## Part III - Administrative, Procedural, and Miscellaneous

### State of New York Low-Income Housing Credit Disaster Relief

#### Notice 2011-87

The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects to provide emergency housing relief needed as a result of the devastation in the State of New York caused by either Hurricane Irene during the period of August 26, 2011 to September 5, 2011, or the remnants of Tropical Storm Lee during the period of September 7, 2011 to September 11, 2011. This relief is being granted pursuant to the Service's authority under § 42(n) and § 1.42-13(a) of the Income Tax Regulations.

#### BACKGROUND

On August 31, 2011, and September 13, 2011, the President declared major disasters for the State of New York. The declarations were made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* Subsequently, the Federal Emergency Management Agency (FEMA) designated jurisdictions for Individual Assistance. The State of New York has requested that the Service allow owners of low-income housing credit projects to provide temporary housing in vacant units to individuals who resided in jurisdictions designated for Individual Assistance in the State of New York and who have been displaced because

their residences were destroyed or damaged as a result of the devastation caused by Hurricane Irene or the remnants of Tropical Storm Lee. Based upon this request and because of the widespread damage to housing caused by Hurricane Irene and the remnants of Tropical Storm Lee, the Service has determined that the New York State Homes and Community Renewal Agency (Agency) may provide approval to project owners to provide temporary emergency housing for displaced individuals in accordance with this notice.

#### I. SUSPENSION OF INCOME LIMITATIONS

The Service has determined that it is appropriate to temporarily suspend certain income limitation requirements under § 42 for certain qualified low-income housing projects. The suspension will apply to low-income housing projects approved by the Agency, in which vacant units are rented to displaced individuals. The Agency will determine the appropriate period of temporary housing for each project, not to extend beyond October 31, 2012 (temporary housing period).

#### II. STATUS OF UNITS

##### A. Units in the first year of the credit period

A displaced individual temporarily occupying a unit during the first year of the credit period under § 42(f)(1) will be deemed a qualified low-income tenant for purposes of determining the project's qualified basis under § 42(c)(1), and for meeting the project's 20-50 test or 40-60 test as elected by the project owner under § 42(g)(1). After the end of the temporary housing period established by the Agency (not to extend

beyond October 31, 2012), a displaced individual will no longer be deemed a qualified low-income tenant.

**B. Vacant units after the first year of the credit period**

During the temporary housing period established by the Agency, the status of a vacant unit (that is, market-rate or low-income for purposes of § 42 or never previously occupied) after the first year of the credit period that becomes temporarily occupied by a displaced individual remains the same as the unit's status before the displaced individual moves in. Displaced individuals temporarily occupying vacant units will not be treated as low-income tenants under § 42(i)(3)(A)(ii). However, even if it houses a displaced individual, a low-income or market rate unit that was vacant before the effective date of this notice will continue to be treated as a vacant low-income or market rate unit. Similarly, a unit that was never previously occupied before the effective date of this notice will continue to be treated as a unit that has never been previously occupied even if it houses a displaced individual. Thus, the fact that a vacant unit becomes occupied by a displaced individual will not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis, nor will it affect the 20-50 test or 40-60 test of § 42(g)(1). If the income of occupants in low-income units exceeds 140 percent of the applicable income limitation, the temporary occupancy of a unit by a displaced individual will not cause application of the available unit rule under § 42(g)(2)(D)(ii). In addition, the project owner is not required during the temporary housing period to make attempts to rent to low-income individuals the low-income units that house displaced individuals.

### III. SUSPENSION OF NON-TRANSIENT REQUIREMENTS

The non-transient use requirement of § 42(i)(3)(B)(i) shall not apply to any unit providing temporary housing to a displaced individual during the temporary housing period determined by the Agency in accordance with section I of this notice.

### IV. OTHER REQUIREMENTS

All other rules and requirements of § 42 will continue to apply during the temporary housing period established by the Agency. After the end of the temporary housing period, the applicable income limitations contained in § 42(g)(1), the available unit rule under § 42(g)(2)(D)(ii), the nontransient requirement of § 42(i)(3)(B)(i), and the requirement to make reasonable attempts to rent vacant units to low-income individuals shall resume. If a project owner offers to rent a unit to a displaced individual after the end of the temporary housing period, the displaced individual must be certified under the requirements of § 42(i)(3)(A)(ii) and § 1.42-5(b) and (c) to be a qualified low-income tenant. To qualify for the relief in this notice, the project owner must additionally meet all of the following requirements:

#### (1) Major Disaster Area

In the case of an individual displaced by the devastation caused by Hurricane Irene, the displaced individual must have resided in a New York jurisdiction designated for Individual Assistance by FEMA as a result of the devastation in the State of New York caused by Hurricane Irene during the period of August 26, 2011 to September 5, 2011.

In the case of an individual displaced by the devastation caused by the remnants of Tropical Storm Lee, the displaced individual must have resided in a New York jurisdiction designated for Individual Assistance by FEMA as a result of the devastation in the State of New York caused by the remnants of Tropical Storm Lee during the period of September 7, 2011 to September 11, 2011.

(2) Approval of the Agency

The project owner must obtain approval from the Agency for the relief described in this notice. The Agency will determine the appropriate period of temporary housing for each project, not to extend beyond October 31, 2012.

(3) Certifications and Recordkeeping

To comply with the requirements of § 1.42-5, project owners are required to maintain and certify certain information concerning each displaced individual temporarily housed in the project, 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 New York jurisdiction designated for Individual Assistance by FEMA as a result of the devastation caused in the State of New York by either Hurricane Irene during the period of August 26, 2011 to September 5, 2011, or the remnants of Tropical Storm Lee during the period of September 7, 2011 to September 11, 2011, as applicable, the individual requires temporary housing. The owner must notify the Agency that vacant units are available for rent to displaced individuals.

The owner must also certify the date the displaced individual began temporary occupancy and the date the project will discontinue providing temporary housing as established by the Agency. The certifications and recordkeeping for displaced individuals must be maintained as part of the annual compliance monitoring process with the Agency.

#### (4) Rent Restrictions

Rents for the low-income units that house displaced individuals must not exceed the existing rent-restricted rates for the low-income units established under § 42(g)(2).

#### (5) Protection of Existing Tenants

Existing tenants in occupied low-income units cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.

### EFFECTIVE DATES

This notice is effective August 31, 2011 (the date of the President's major disaster declaration) for devastation caused by Hurricane Irene in the State of New York during the period of August 26, 2011 to September 5, 2011. This notice is effective September 13, 2011 (the date of the President's major disaster declaration) for devastation caused by the remnants of Tropical Storm Lee in the State of New York during the period of September 7, 2011 to September 11, 2011.

### PAPERWORK REDUCTION ACT

The collection of information contained in this notice 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 1545-2220.

An 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 notice is in the section titled "OTHER REQUIREMENTS" under "(3) Certifications and Recordkeeping." This information is required to enable the Service to verify whether individuals are displaced as a result of the devastation caused in the State of New York by either Hurricane Irene during the period of August 26, 2011 to September 5, 2011, or the remnants of Tropical Storm Lee during the period of September 7, 2011 to September 11, 2011, and thus warrant temporary housing in vacant low-income housing units. The collection of information is required to obtain a benefit. The likely respondents are individuals and businesses.

The estimated total annual recordkeeping burden is 300 hours.

The estimated annual burden per recordkeeper is approximately 15 minutes. The estimated number of recordkeepers is 1200.

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 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this notice is David Selig of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Mr. Selig at (202) 622-3040 (not a toll-free call).