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Deadlines for COVID Relief Approaching

by A.J. Johnson

In October 2022, the IRS published Notice 2022-52, providing unexpected extensions to housing finance authorities (HFAs) and LIHTC properties because of the COVID pandemic. The relief was granted because of unavoidable labor and supply-chain disruptions delaying the construction, rehabilitation and restoration of properties throughout the United States.

Much of the COVID-related relief granted in the notice will expire at the end of 2023, but there are exceptions. The following relief extensions were included in the notice:

- **Extension of certain placed-in-service deadlines:** This provision extends placed-in-service deadlines for projects receiving allocations in 2019, 2020 and 2021.
  - If the original deadline for a low-income building to be placed in service was the close of calendar year 2020, the new deadline was the close of calendar year 2022 (that is, Dec. 31, 2022).
  - If the original placed-in-service deadline was the close of calendar year 2021 and the original deadline for the 10-percent test in § 42(h)(1)(E)(ii) was before April 1, 2020, the new placed-in-service deadline is the close of calendar year 2023 (that is, Dec. 31, 2023).
  - If the original placed-in-service deadline was the close of calendar year 2021 and the original deadline for the 10-percent test in § 42(h)(1)(E)(ii) was on or after April 1, 2020, and on or before Dec. 31, 2020, then the new placed-in-service deadline is the close of calendar year 2023 (that is, Dec. 31, 2023).
  - If the original placed-in-service deadline was the close of calendar year 2022 (and thus the original deadline for the 10-percent test in § 42(h)(1)(E)(ii) was in 2021), then the new placed-in-service deadline is the close of calendar year 2024 (that is, Dec. 31, 2024).
  - If the original placed-in-service deadline is the close of calendar year 2023 (and thus the original deadline for the 10-percent test in § 42(h)(1)(E)(ii) was in 2022), then the new placed-in-service deadline is the close of calendar year 2024 (that is, Dec. 31, 2024).
- **Extension of agency-set reasonable restoration periods:** This notice modifies and amplifies section IV.D of Notice 2022-05 by permitting a 24-month extension of reasonable restoration periods set by an agency.

  - For purposes of § 42(j)(4)(E) both in the case of a casualty loss not due to a pre-COVID-19-pandemic major disaster and in situations governed by section 8.02 of Rev. Proc. 2014-49 in the case of a casualty loss due to a pre-COVID-19-pandemic major disaster, if a low-income building's qualified basis is reduced by reason of the casualty loss and the reasonable period to restore the loss by reconstruction or replacement that was originally set by the agency (original reasonable restoration period) ended on or after April 1, 2020, then the last day of the reasonable restoration period is postponed by 24 months but not beyond Dec. 31, 2023.
  - Notwithstanding the preceding sentence, the agency may require a shorter extension or no extension at all.
  - If a property meets the deadline imposed by the HFA (not beyond Dec. 31, 2023), the qualified basis of the building for taxable years ending after the first day of the casualty and before the completion of the restoration shall be the qualified basis at the end of the taxable year immediately preceding the first day of the casualty.
- **Extension of agency-set correction periods:** This section extends the correction period set by an agency by 12 months.
  - If a correction period that was set by the agency ended on or after April 1, 2020, but before Dec. 31, 2022, then the end of the correction period (including as already extended, if applicable) is extended by a year, but not beyond Dec. 31, 2023.
  - If the correction period originally set by the agency ends during 2023, the end of the period is extended to Dec. 31, 2023.
  - Notwithstanding the preceding sentences, the agency may require a shorter extension or no extension at all.
- **Extension of waivers of compliance monitoring physical inspections:** This section extends the temporary waiver for compliance monitoring physical inspections.
  - An agency was not required to conduct compliance monitoring physical inspections in the period beginning on April 1, 2020, and ending on June 30, 2022.
  - Agencies may extend the waiver if the level of COVID transmission makes such an extension appropriate.
  - Depending on varying rates of transmission, the extension may be state-wide, may be limited to specific locales, or may be on a project-by-project basis.
  - No such extension may go beyond Dec. 31, 2023.

- The agency must resume compliance-monitoring reviews as due under § 1.42-5 once the waiver expires.
- Between April 1, 2020, and the end of 2022 only, when the agency gave an owner reasonable notice that it would physically inspect not-yet-identified low-income units, it was able to treat reasonable notice as being up to 30 days.
- Beginning on Jan. 1, 2023, for this purpose, reasonable notice again is generally no more than 15 days

Owners and managers should note that this extended relief does not include an extension for qualifying units in order to avoid the “two-thirds” unit rule. For projects claiming first year credits in 2022, units qualified no later than six months after the end of the tax year will be included in qualified basis as of the end of 2022. For calendar year taxpayers, this deadline was June 30, 2023. Units qualified after the six-month period will be treated as “two-thirds” units.

Owners should note that a number of extensions granted in Notice 2022-05 were not extended in 2022-52. The following COVID relief was not extended by 2022-52:

- Relief for the 10% test for carryover allocations: If credits were allocated to a project in 2022, at least 10% of the total development costs must be incurred within 12 months of the allocation date.
- The 24-Month Minimum Rehabilitation Period: If the original deadline for the 24-month minimum rehabilitation expenditure period for a building originally was on or after April 1, 2020, and was on or before Dec. 31, 2021, then that deadline was extended to the original date plus 18 months. If the original deadline for this requirement was on or after Jan. 1, 2022, and on or before June 30, 2022, then that deadline was extended to June 30, 2023. If the original deadline for this requirement was on or after July 1, 2022, and on or before Dec. 31, 2022, then that deadline is extended to the original date plus 12 months. If the original deadline for this requirement was on or after Jan. 1, 2023, and on or before Dec. 30, 2023, then that deadline is extended to Dec. 31, 2023.

It is important to note that 2022-52 did not extend relief for qualifying units in order to avoid the “two-thirds” unit rule. If the close of the first year of the credit period with respect to a building was on or after April 1, 2020, and on or before Dec. 31, 2022, then for purposes of § 42(f)(3)(A)(ii), 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 six-month period following the close of that first year. This provides an additional six months after the first year of the credit period to qualify units in order to avoid the “two-thirds” unit rule. Based on the clear language in this part of the notice, properties that had a 2020 initial credit year had until June 30, 2021, to qualify units in order to avoid the "two-thirds" unit rule. Those properties do not benefit from the extension provided in Notice 2022-05. Properties with an initial credit year of 2021 had until June 30, 2022, to qualify units in order to avoid the "two-thirds" unit rule. Properties with an initial credit year of 2022 had until June 30, 2023, to qualify units in order to avoid the "two-thirds" unit rule. (This assumes a calendar tax year.)

In summary, the only relief that extends beyond 2023 is relief relating to the placed-in-service date. Properties that had a 2022 or 2023 deadline for placing buildings in service now have until Dec. 31, 2024. No other relief will extend beyond 2023 — unless further relief is granted by the IRS. Such relief is not expected.

Prior to becoming a private developer in August 1983, A.J. was with K-Mart Corporation, Portsmouth Redevelopment & Housing Authority, and Suffolk Redevelopment & Housing Authority. While with the public housing agencies, A.J. was responsible for the implementation of a variety of federally funded programs, including public housing, Section 8 housing, housing rehabilitation (single family and multi-family), Community Development Block Grant (CDBG), Urban Development Action Grants (UDAG), Urban Homesteading, and was a Section 202 Housing Consultant. As a private developer, A.J. coordinated the development of over 70 multifamily housing complexes utilizing federal, state and conventional financing, of which more than 40 used the federal low-income housing tax credit. Currently, A.J. is a training advisor to the Housing Credit Certification Board of the National Association of Home Builders, which is responsible for implementing the requirements of a national certification examination for tax credit management personnel and carries the designation of Housing Credit Certified Professional (HCCP). A.J. is a nationally known trainer in affordable housing issues and served as a technical advisor to Congressional staff during the drafting of both the Low-Income Housing Tax Credit Program and the Fair Housing Amendments Act of 1988 and is a certified Fair Housing Specialist through the National Center for Housing Management.