



IRS Extends COVID-19 Relief

by A.J. Johnson

On Friday, Jan. 14, 2022, the IRS released Notice (2022-05) extending widespread temporary relief from certain requirements for low-income housing tax credit (LIHTC) properties and private activity tax-exempt bond-financed properties because of the COVID-19 pandemic.

Extended relief includes:

- Relief for the 10% test for carryover allocations. If the original deadline for an owner to meet the 10% test for carryover allocations was on or after April 1, 2020, and on or before Dec. 31, 2020, the deadline is extended to the original deadline plus two years. If the original deadline is on or after Jan. 1, 2021, and before Dec. 31, 2022, the deadline is extended to Dec. 31, 2022;
- 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 is extended to the original date plus 18 months.

If the original deadline for this requirement is on or after Jan. 1, 2022, and on or before June 30, 2022, then that deadline is extended to June 30, 2023.

If the original deadline for this requirement is 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 is on or after Jan. 1, 2023, and on or before Dec. 30, 2023, then that deadline is extended to Dec. 31, 2023;

- The placed-in-service deadline. If the original deadline for a low-income building to be placed in service was the close of calendar year 2020, the new deadline is the close of calendar year 2022 (Dec. 31, 2022).

If the original placed-in-service deadline was the close of calendar year 2021 and the original deadline for the 10% test in §42(h)(1)(E)(ii) was before April 1, 2020, the new placed-in-service deadline is the close of calendar year 2022 (Dec. 31, 2022).



If the original placed-in-service deadline was the close of calendar year 2021 and the original deadline for the 10% 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 (Dec. 31, 2023).

If the original placed-in-service deadline is the close of calendar year 2022 (and the original deadline for the 10% test was in 2021), then the new placed-in-service deadline is the close of calendar year 2023 (Dec. 31, 2023);

- The reasonable restoration period in the event of casualty loss. 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 HCA (original Reasonable Restoration Period) ends on or after April 1, 2020, then the last day of the Reasonable Restoration Period is postponed by 18 months, but not beyond Dec. 31, 2022. Notwithstanding the preceding sentence, the State Housing Finance Agency may require a shorter extension, or no extension at all; and
- Agency correction periods. If a correction period that was set by the Agency ended on or after April 1, 2020, and before Dec. 31, 2021, then the end of the correction period (including as already extended, if applicable) is extended by a year, but not beyond Dec. 31, 2022. If the correction period originally set by the Agency ends during 2022, the end of the period is extended to Dec. 31, 2022. Notwithstanding the preceding sentences, the Agency may require a shorter extension, or no extension at all.

The notice also provides an extension to satisfy occupancy obligations. 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 to avoid the 2/3-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 to avoid the 2/3-unit rule. Those properties do not



benefit from the extension provided in Notice 2022-05. Properties with an initial credit year of 2021 have until June 30, 2022, to qualify units in order to avoid the 2/3-unit rule.

Concerning compliance, the notice provides an extension to the requirement for a 30-day notice for HFA reviews of tenant files through the end of 2022 and will permit HFAs to defer physical inspections through June 30, 2022, with the option to extend the deferral to the end of 2022 in consultation with local public health experts.

An Agency was not required to review tenant files in the period beginning April 1, 2020, and ending Dec. 31, 2021. The agency must have resumed tenant-file review as due under §1.42-5 as of Jan. 1, 2022. For purposes of §1.42-5(c)(2)(iii)(C)(3), between April 1, 2020, and the end of 2022, when the agency gives an owner reasonable notice that it will review low-income certifications of not-yet-identified low-income units, it may treat reasonable notice as being up to 30 days. Beginning Jan. 1, 2023, for this purpose, reasonable notice again will generally be no more than 15 days.

An agency is not required to conduct compliance monitoring physical inspections in the period beginning April 1, 2020, and ending June 30, 2022. Because of high state-to-state and intra-state variability of COVID-19 transmission, an agency, in consultation with public health experts, may extend the waiver in the preceding sentence if the level of transmission makes such an extension appropriate. Depending on varying rates of transmission, the extension may be statewide, limited to specific locales, or on a project-by-project basis. No such extension may go beyond Dec. 31, 2022.

The agency must resume compliance-monitoring reviews as due under §1.42-5 once the waiver expires. For purposes of §1.42-5(c)(2)(iii)(C)(3), between April 1, 2020, and the end of 2022 only, when the agency gives an owner reasonable notice that it will physically inspect not-yet-identified low-income units, it may treat reasonable notice as being up to 30 days. Beginning Jan. 1, 2023, for this purpose, reasonable notice again is generally no more than 15 days.

The closure of amenities or common areas in LIHTC properties due to COVID-19 will not result in a reduction of eligible basis, and essential workers may be provided emergency housing in LIHTC properties. This will apply until Dec. 31, 2022. During the above period, an HFA may deny any application of the above waiver or, based on public health criteria, may limit the waiver to partial closure, or to limited or conditional access of an amenity or common area. (For example, the agency may apply the waiver to access an amenity or common area that is limited to persons wearing masks or to persons fully vaccinated against COVID-19.)



The following relief is provided for tax-exempt bond properties:

- The 12-month transition period to meet set-asides for qualified residential rental projects. For purposes of section 5.02 of Rev. Proc. 2004-39, if the last day of a 12-month transition period for a qualified residential rental project originally was on or after April 1, 2020, and before Dec. 31, 2022, then that last day is postponed to Dec. 31, 2022.
- The §147(d) two-year rehabilitation expenditure period for bonds used to provide qualified residential rental projects. If a bond is used to finance a qualified residential rental project and if the last day of the §147(d) two-year rehabilitation expenditure period for the bond originally was on or after April 1, 2020, and before Dec. 31, 2023, then that last day is postponed to the earlier of 18 months from the original due date or Dec. 31, 2023.

Owners of LIHTC or tax-exempt bond properties that may be affected by this relief should obtain a copy of the IRS Notice.

Prior to becoming a private developer in August 1983, Mr. Johnson was with K-Mart Corporation, Portsmouth Redevelopment & Housing Authority, and Suffolk Redevelopment & Housing Authority. While with the public housing agencies, Mr. Johnson 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, Mr. Johnson 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, Mr. Johnson 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). Mr. Johnson 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.