



IRS Notice 2022-05: Compliance Relief Extended

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Oct. 7, 2022, was a very exciting day in the LIHTC world as the long awaited average income final guidance was released. IRS Notice 2022-52 was also released on Oct. 7; the notice extended certain relief under notice 2022-05 that, because of the frenzy surrounding the released of the average income final guidance, is easily overlooked.

Pandemic relief is still happening, and it is important to understand what has been extended as not all provisions under IRS Notice 2022-05 are included.

What was Extended?

Placed in Service

In general, LIHTC buildings must be placed in service (PIS) no later than the end of the second calendar year after the award. For example, a carryover allocation agreement is received in 2020. The PIS deadline under IRC Section 42(h)(1)(E)(i) is no later than Dec. 31, 2022, the second calendar year after the year of award.

In general, Notice 2022-52 provides a 12-month extension to the PIS rules as following:

- For LIHTC awards made in 2018 that had an original PIS deadline of Dec. 31, 2020, the new PIS deadline is Dec. 31, 2022.
- For LIHTC awards made in 2019 that had an original PIS deadline of Dec. 31, 2021, regardless of when the 10% test deadline was, the new PIS deadline is Dec. 31, 2023. Note: Notice 2022-05 took into consideration when the 10% test was due as it related to the PIS extension deadline.
- For LIHTC awards made in 2020 that had an original PIS deadline of Dec. 31, 2022, the new PIS deadline is Dec. 31, 2024.
- For LIHTC awards made in 2021 that had an original PIS deadline of Dec. 31, 2023, the new PIS deadline is Dec. 31, 2024.



| Year of Award | Original PIS | PIS Under Notice 2022-05 | PIS Under Notice 2022-52 |
|---------------|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| 2018 | 12/31/2020 | 12/31/2021 | 12/31/2022 |
| 2019 | 12/31/2021 | <ul style="list-style-type: none"> • 12/31/2022 if 10% test deadline in first quarter of 2020 • 12/31/2023 if 10% test deadline after first quarter of 2020 | 12/31/2023 |
| 2020 | 12/31/2022 | 12/31/2023 | 12/31/2024 |
| 2021 | 12/31/2023 | No extension provided | 12/31/2024 |

Casualty Loss Reasonable Restoration Period

A casualty loss is a sudden, unexpected or unusual event that results in damage, destruction or loss of property. This type of loss is different than if the damage occurred during normal use, the owner willfully caused the damage or was willfully negligent, or was progressive deterioration. The distinction is important because casualty loss has a different timeframe to correct.

In general, the reasonable restoration period for a casualty loss event is two years after the year in which the event occurred. For example, a building experienced a fire in October 2020. The reasonable restoration period would end no later than Dec. 31, 2022.

Notice 2022-52 provides relief on the reasonable restoration period for casualty losses caused by any reason. If the original restoration deadline ended on or after April 1, 2020, the notice allows for restoration deadline up to 24 months, but not beyond Dec. 31, 2023. The ability to extend the deadline is at the discretion of the agency.

In the example above where the reasonable restoration period ended Dec. 31, 2022, at the discretion of the agency, it can be extended to Dec. 31, 2023.

Correction Period

Under Treasury Regulation (Treas. Reg.) Section 1.42-5(e)(4), when the state housing finance agency (HFA) identifies an event of noncompliance, the owner is provided a correction period



before the HFA is required to notify the IRS of the event on Form 8823. The initial correction period can be up to 90 days, but cannot extend beyond six months and only if the HFA determines there is good cause for such an extension.

If a correction period set by an HFA ended on or after April 1, 2020, and before Dec. 31, 2022, then the correction period is extended by one year, but not beyond Dec. 31, 2023. For example, if the correction period ended Oct. 15, 2022, then it is extended to Oct. 15, 2023.

For a correction period originally established in 2023, the end of that correction period is Dec. 31, 2023. For example, the correction period ends Jan. 15, 2023, then it is extended to Dec. 31, 2023. It is important to note that the HFA does have control over these extensions and can require a shorter extension or no extension.

Compliance Monitoring

For the physical inspection activity, because of variances in COVID-19 transmission from state to state, and even within a state, the agency — in concert with public health officials — has the authority to extend this provision without any further guidance from the IRS, through Dec. 31, 2023.

Note: This is specific to the physical inspection activity only; no further relief was granted as related to a tenant file review that is due.

Further, Treas. Reg. Section 1.42-5(c)(2)(iii)(C) limits notification of a tenant file review or a physical inspection to no more than 15 days, and that has been determined as reasonable. Notice 2022-05 provided that, for both a tenant file review and/or physical inspection conducted before Dec. 31, 2022, the reasonable period for notice is 30 days; starting Jan. 1, 2023, the reasonable period for notice is 15 days in accordance with Treas. Reg. Section 1.42-5.

What's NOT Extended

Notice 2022-52 does not provide any further extensions of the 10% test, the rehabilitation expenditure deadline, the lease-up period or tenant file reviews.

If the original 10% test deadline is on or before Dec. 31, 2020, it is still due two years from the original deadline. If the 10% test deadline is on or after Jan. 1, 2021, and before Dec. 31, 2022, the deadline is Dec. 31, 2022. At their discretion, agencies may still provide up to a six-month extension of the 10% test for properties located in major presidentially declared disaster areas beyond Dec. 31, 2022.



Similarly, the rehabilitation expenditure deadline remains what was set forth in Notice 2022-05:

| Original rehabilitation expenditure deadline | | |
|----------------------------------------------|---------------------|-----------------------------------------------------------------|
| <i>On or After</i> | <i>On or Before</i> | <i>Deadline</i> |
| 4/1/2020 | 12/31/2021 | 18 months from the original rehabilitation expenditure deadline |
| 1/1/2022 | 6/30/2022 | 6/30/2022 |
| 7/1/2022 | 12/31/2022 | 12 months from the original rehabilitation expenditure deadline |
| 1/1/2023 | 12/31/2023 | 12/31/2023 |

Prior notices have allowed for unit(s) initially occupied six months after the first year of the credit period to count in qualified basis. For example, the first year of the credit period is 2021. Unit(s) initially occupied thru June 30, 2022, could be included in the building’s qualified basis for the purposes on mitigating 15-year credits.

This relief was not extended. As such, if 2022 is the first year of the building’s credit period, all units must be initially occupied no later than Dec. 31, 2022, to be included in the qualified basis.

Stephanie Naquin, Director of Multifamily Property Compliance, is a multifamily compliance consultant with Novogradac. She is based in Austin, Texas, and works nationally. Her work includes consulting with state agencies, equity providers, lenders, attorneys, developers and onsite staff on topics related to multifamily compliance of IRC §42, IRC §142, the HOME program, National Housing Trust Fund, HUD Multifamily programs, and other locally administrated affordable housing programs, with a focus on holistic compliance. In addition, her team is responsible for reviewing thousands of tenant files annually for compliance across the country; not only for compliance with federal compliance regulations, but through the lens of the applicable awarding entity. Her experience in both the private and regulatory sectors of the industry allows her to synthesize complicated federal and state regulations and present that information in a concise and easily digestible manner. Ms. Naquin serves on the TAAHP (Texas Affiliation of Affordable Housing Providers) Governing Board and is the co-chair of their compliance committee. Her certifications include the COS (Certified Occupancy Specialist), HCCP (Housing Credit Certified Professional), and the NPCC (Novogradac Property Compliance Certification).