



CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: February 3, 2022

TO: Project Owners and Management Agents of Low-Income Housing Tax Credit (LIHTC) Properties

FROM: California Tax Credit Allocation Committee – Compliance Section

RE: IRS Guidance for 2022 – IRS Notice 2022-05

This memorandum serves as guidance from the California Tax Credit Allocation Committee (“CTCAC”) to owners and property management agents of LIHTC properties in California with regards to IRS Notice 2022-05 (“Notice 2022-05”) which provides temporary relief from certain requirements of IRC Section 42 the LIHTC Program. These temporary relief measures are:

Time Sensitive Actions – postponed

For the following actions that were due to be performed between the period of April 1, 2020 and December 31, 2022, the IRS will postpone deadlines according to the following schedule:

1. 10% Test deadline extended
 - a. If the original deadline for the project was between 4/1/2020 and 12/31/2020, the deadline is extended to the original deadline + 2 years
 - b. If the original deadline for the project was between 1/1/2021 and 12/31/2022, the deadline is extended to 12/31/2022
2. 24-month minimum rehabilitation expenditure deadline extended
 - a. If the original deadline for the project was between 4/1/2020 and 12/31/2021, the deadline is extended to the original deadline + 18 months
 - b. If the original deadline for the project was between 1/1/2022 and 6/30/2022, the deadline is extended to 6/30/2023

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- c. If the original deadline for the project was between 7/1/2022 and 12/31/2022, the deadline is extended to the original deadline + 12 months
 - d. If the original deadline for the project was between 1/1/2023 and 12/30/2023, the deadline is extended to 12/31/2023
3. Placed in Service (PIS) Deadline
- a. If the original deadline for the project was the close of calendar year 2020, the PIS deadline is extended to the close of calendar year 2022
 - b. If the original deadline for the project was the close of calendar year 2021 and the original deadline for the 10% test was before 4/1/2020, the PIS deadline is extended to the close of calendar year 2022
 - c. If the original deadline for the project was the close of calendar year 2021 and the original deadline for the 10% test was between 4/1/2020 and 12/31/2020, the PIS deadline is extended to the close of calendar year 2023.
 - d. If the original deadline for the project was the close of calendar year 2022 and the original deadline for the 10% test was in 2021, the PIS deadline is extended to the close of calendar year 2023
4. Casualty Loss
- a. If the reasonable restoration period ends on or after 4/1/2020, the period is extended by 18 months, but no later than 12/31/2022
5. Occupancy Obligations
- a. If the close of the first year credit period is between 4/1/2020 and 12/31/2022, then for purposes of the IRS the qualified basis for the building for the first year is calculated by taking into account any increase in the low-income units by the close of the first year + 6 months

Compliance Monitoring

Notice 2022-05 grants extends some provisions of previous Notices 2020-53 and 2021-12 and created new provisions for physical inspections and notification deadlines. The relief is as follows:

1. For the period of 4/1/2020 through 12/31/2022 – reasonable notice of intent to conduct an inspection may be up to 30 days instead of 15 days. This will revert back to 15 days on 1/1/2023.
2. Physical inspections on properties are not required to be completed through 6/30/2022.
 - a. Due to the potential of high interstate and intrastate traffic, states may extend the waiver on physical inspections through the end of 2022 but may not go beyond 12/31/2022. The normal parameters will resume on 1/1/2023.
3. Common Areas and Amenities
 - a. A temporary, partial unavailability, or closure of a Common Area due to Covid restrictions does not result in a reduction of eligible basis. This waiver will be extended from 4/1/2020 to 12/31/2022.

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4. Emergency Housing for Medical Personnel and other Essential Workers
 - a. Temporarily allows owners of tax credit properties to provide emergency housing to medical personnel or other essential workers (as defined by State or local governments) during the COVID-19 pandemic. Owner may treat these individuals as “displaced” and provide emergency housing under the provisions of Revenue Procedures 2014-49 and 2014-50. This waiver will be extended from 4/1/2020 to 12/31/2022.

Reasonable Notice

Notice 2022-05 grants relief for the Allocating Agency to extend the notification time from 15 days to 30 days for the calendar year 2022.

In California, CTCAC will follow this guidance on all properties scheduled to be monitored in 2022. Extended Use projects that were initially scheduled for 2020 will be seen in 2022. The 15-day Notification of Intent to Conduct an Inspection will resume on 1/1/2023.

Physical Inspections

Notice 22-05 grants a moratorium on physical inspections of a project for the period of 1/1/2022 through 6/30/2022. For the period of 7/1/2022 to 12/31/2022, states may extend the moratorium, as needed, determined by consultation with public health experts. The notice does not extend the moratorium on states conducting file audits during the same period.

In California, CTCAC will continue to complete file audits through the Desk Audit procedure between 1/1/2022 and 6/30/2022, but will not complete physical inspections during this timeframe. Properties that receive a desk audit during this period will not have a physical audit on the project until their next normal auditing cycle. Prior to 6/30/2022, CTCAC will assess the state of COVID-19 transmission in California to determine if an extension to the physical inspection waiver is warranted.

Common Areas and Amenities

Notice 2022-05 continues the guidance provided in IRS Notices 2020-53 and 2021-12, that if a common area or amenity is temporarily unavailable due to COVID-19 and not due to other reasons, the temporary closure does not result in a reduction of the eligible basis of the building.

In California, CTCAC will continue to require that specific amenities included in basis, such as the laundry room and the computer room, remain open. The laundry room is necessary for residents to wash their clothing and bedding for hygiene purposes and the computer room may serve as the only access some residents have for ordering food, deliveries, and prescriptions. Owners and management agents may put in place restrictions on the use of the computer room, including but not limited to:

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1. Limiting the number of people in the space
2. Requiring masks be worn in all common spaces or hallways
3. Sanitize the room and equipment following use
4. Limiting the hours that the computer room is accessible
5. Requiring a sign-up sheet to use the computer room
6. Limiting access to the computer room for essential use only (ordering food, deliveries, or prescriptions)

If the computer room is located inside a community room, CTCAC suggests the main portion of the community room be blocked off with designated spacing for residents to access to the computers.

For projects that provide service amenities such as health and well-being classes or after school programs, CTCAC suggests finding alternative virtual methods to hold the classes/programs that still allow for the service to be provided. **Failure to provide required service amenities within 6 months of a project placing in service, or not meeting the required number of service hours stated in the Regulatory Agreement, may result in either a fine or negative points to the owner.**

For case management services that require in-person contact, CTCAC suggests requiring masks, safe social distancing between persons, and sanitizing surfaces before and after each session.

Emergency Housing for Medical Personnel and other Essential Workers

Notice 2022-05 continues the guidance provided in IRS Notices 2020-53 and 2021-12 to allow owners of tax credit properties to provide emergency housing to medical personnel or other essential workers (as defined by State or local governments) during the COVID-19 pandemic for the period of 4/1/2020 to 12/31/2022. Owner may treat these individuals as “displaced” and provide emergency housing under the provisions of Revenue Procedures 2014-49 and 2014-50.

In California, CTCAC requires a printed document from the state or local government defining the term “essential worker”. Income eligibility will not be required to temporarily house medical personnel or other essential workers for the period of 4/1/2020 to 12/31/2022. Any residents that remain in the units that were used as emergency housing under these provisions, must be certified as income eligible effective 1/1/2023, unless further guidance from the IRS extends this provision.

The provisions of emergency housing do not allow for disregarding waiting list(s) at the project. If a project has a waiting list of qualified households, an owner may not “skip” the applicants on the waiting list to provide emergency housing to essential workers.

The CTCAC Compliance Section thanks you for your patience and understanding as we continually monitor COVID-19 and work towards meeting our LIHTC obligations, while maintaining respect for the safety and health of CTCAC staff, the staff of the owner and management companies we serve, and the residents who reside in tax credit projects. As circumstances change, CTCAC may provide additional guidance or change existing

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guidance to better reflect information provided by the IRS, the Governor of California, the Center for Disease Control (CDC), or state and local public health agencies.

If you have any questions, please contact Senior Program Managers Elizabeth Gutierrez-Ramos at elizabeth.gutierrez@treasurer.ca.gov or Shannon Nardinelli at shannon.nardinelli@treasurer.ca.gov.