SQUIRE SANDERS

IRS Issues Guidance on Impact of Hurricane Sandy on Low-Income Housing Tax Credit Projects

On November 5, 2012 the IRS issued Notice 2012-6, which provides early guidance on the impact of Hurricane Sandy on low-income housing tax credit projects in the areas that have been hardest hit. The notice, consistent with the IRS's position after Hurricane Katrina, provides that all state housing agencies, regardless of whether the state is within or outside of the area affected by the storm, *may* allow project owners to provide temporary emergency housing for individuals who resided in areas declared by FEMA to be eligible for Individual Assistance and who's residence was damaged or destroyed by Hurricane Sandy ("displaced individuals") for a period of time determined by the applicable state housing agency ("temporary housing period"). If the state agency approves a project for temporary emergency housing the following rules apply:

- Income limitation requirements are suspended for vacant units rented to displaced individuals during the temporary housing period.
- Units in the first year of the credit period occupied by displaced individuals will be treated as if they are occupied by a qualified low-income tenant for purposes of determining qualified basis and satisfying the 20-50 or 40-60 test.
- Vacant units after the first credit year that are occupied by a displaced individual will retain their previous designation (either market rate, low-income or vacant) and will be treated as remaining vacant throughout the temporary housing period for purposes of determining the applicable fraction and satisfying the 20-50 or 40-60 test.
- The non-transient use requirement does not apply to units occupied by a displaced individual during the temporary housing period.
- To qualify for this program the project must satisfy all of the following requirements:
    - Obtain approval from the applicable state housing agency, which will determine the applicable temporary housing period on a project-by-project basis which cannot extend beyond November 30, 2013;
    - The displaced individual must have lived in an area designated as eligible Individual Assistance by FEMA;
    - Rents cannot exceed the existing restricted rates for the low-income units;
    - Existing tenants cannot be evicted to provide temporary housing; and
    - The project must maintain and report certain information on each displaced individual during the annual compliance monitoring reporting.

Additionally, all of the relief provided by the IRS to projects after Hurricane Katrina through Revenue Procedure 2007-54 also applies to projects affected by Hurricane Sandy and located in areas designated by FEMA as a major disaster area and eligible for Individual Assistance and/or Public Assistance. This relief includes:

- Carryover Relief – if approved by the applicable state housing agency the deadline for the 10% test is extended six months and the placed in service requirements are met if the building is placed in service no later than December 31 of the year following the end of the usual two year placed in service period.
- Recapture Relief – any building that is out of the first year of the credit period and has suffered a reduction of qualified basis will not be subject to recapture or loss of credits as long as the building's qualified basis is restored within the time that the state housing agency considers a reasonable restoration period, not to exceed 24 months.
- First Credit Year – for buildings in the first year of the credit period that are severely damaged or destroyed the state housing agency has the discretion to toll the beginning of the first credit year for up to 24 months or treat the credits as returned. No credits may be claimed during the tolling period.

If you have any questions on this guidance, please contact your primary Squire Sanders lawyer or the lawyer listed below.

Contact

Holly H. Heer
T +1 614 365 2716
holly.heer@squiresanders.com

 November 2012