Internal Revenue bulletin

Bulletin No. 2014–37
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HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 2014–22, page 533.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for September 2014.

Rev. Proc. 2014–49, page 535.

In the context of a Major Disaster, this revenue procedure provides temporary relief from certain requirements of § 42 of the Internal Revenue Code for Agencies and Owners. This revenue procedure also provides emergency housing relief for individuals who are displaced by a Major Disaster from their principal residences in certain Major Disaster Areas.

Rev. Proc. 2014–50, page 540.

This revenue procedure automatically suspends certain requirements under § 142(d) for qualified residential rental projects financed with exempt facility bonds issued by state and local governments under § 142. The revenue procedure suspends these requirements for one year following a Presidential declaration of a qualifying major disaster. During this period, the revenue procedure suspends the income requirements for units occupied by individuals displaced by the disaster and modifies other requirements of § 142(d) to accommodate this suspension.

Rev. Proc. 2014–51, page 543.

This revenue procedure provides guidance on certain aspects of an entity's qualification as a real estate investment trust (REIT) in the context of transactions involving debt secured by real estate the fair market value of which had declined (distressed mortgage loan). This revenue procedure modifies and supersedes Rev. Proc. 2011–16 to address situations in which there is a subsequent increase in the value of real property securing a distressed mortgage loan. This guidance provides needed guidance for REITs holding distressed mortgage loans.

EMPLOYEE PLANS

Rev. Rul. 2014–24, page 529.

This revenue ruling modifies the list of group trust retiree benefit plans eligible to participate in 81–100 group trusts in accordance with the requirements of Rev. Rul. 2011–1, 2011–2 I.R.B. 251, as modified by Notice 2012–6, 2012–3 I.R.B. 293, to include trusts of certain retirement plans qualified only under the Puerto Rico Code (Código de Rentas Internas para un Nuevo Puerto Rico de la Ley Núm. 1 de 31 de enero de 2011) and clarifies that assets held by certain separate accounts maintained by insurance companies may be invested in 81–100 group trusts. In addition Rev. Rul 2014–24 provides limited transition relief.

Finding Lists begin on page ii.
Index for July through September begins on page iv.

Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2014. See Rev. Rul. 2014–22, page 533.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2014. See Rev. Rul. 2014–22, page 533.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of September 2014. See Rev. Rul. 2014–22 , page 533.

Section 401.—Qualified Pension, Profit-Sharing, and Stock Bonus Plans

Section 501.—Exemption from Tax on Corporations, Certain Trusts, Etc.

(Also 26 CFR 1.414(l)–1, 1.933–1, 1.501(a)–1, and 301.7805–1)

Rev. Rul. 2014–24

Investment in group trusts by certain Puerto Rico retirement plans and by certain insurance company separate accounts

PURPOSE

This revenue ruling modifies the list of group trust retiree benefit plans eligible to participate in group trusts described in Rev. Rul. 81–100, 1981–1 C.B. 326, as modified by Rev. Rul. 2011–1, 2011–2 I.R.B. 251 (which was modified by Notice 2012–6, 2012–3 I.R.B. 293) ("81–100 group trusts"), to include trusts of certain retirement plans qualified only under the Código de Rentas Internas para un Nuevo Puerto Rico de la Ley Núm. 1 de 31 de enero de 2011 ("Puerto Rico Code"), clarifies that assets held by certain separate accounts maintained by insurance companies may be invested in 81–100 group trusts, and provides limited transition relief.

ISSUES

1. May a retirement plan that is qualified only under the Puerto Rico Code, and that is described in section 1022(i)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") ("section 1022(i)(1) plan"), be a group trust retiree benefit plan eligible to participate in an 81–100 group trust?

2. Under what circumstances may a group trust retiree benefit plan invest in an 81–100 group trust through a separate account maintained by an insurance company without affecting the tax status of either the group trust or the group trust retiree benefit plans participating in the group trust?

LAW AND ANALYSIS

Rev. Rul. 81–100 provides that qualified retirement plans and individual retirement accounts (IRAs) are permitted to pool their assets for investment purposes in an 81–100 group trust if certain specified requirements are satisfied. Rev. Rul. 2011–1 revised and restated the generally applicable rules for group trusts described in Rev. Rul. 81–100.

Rev. Rul. 2011–1, as modified by Notice 2012–6, permits participation in 81–100 group trusts by certain retiree benefit plans, such as governmental retiree benefit plans under § 401(a)(24), in addition to § 401(a) qualified retirement plans, eligible governmental plan trusts or custodial accounts under § 457(b), annuity contracts under § 403(b), and IRAs, if certain requirements are met. Rev. Rul. 2011–1 collectively refers to the entities permitted to invest in 81–100 group trusts as "group trust retiree benefit plans."

Rev. Rul. 2011–1 further holds that the tax status of a group trust[1] will be derived from the tax status of the entities participating in the group trust to the extent of the entities' equitable interests in the group trust if the following requirements are satisfied:

(1) The group trust is itself adopted as a part of each adopting group trust retiree benefit plan.

(2) The group trust instrument expressly limits participation to: pension, profit-sharing, and stock bonus trusts or custodial accounts qualifying under § 401(a) that are exempt under § 501(a); individual retirement accounts that are exempt under § 408(e); eligible governmental plan trusts or custodial accounts under § 457(b) that are exempt under § 457(g); custodial accounts under § 403(b)(7); retirement income accounts under § 403(b)(9); and § 401(a)(24) governmental plans.

(3) The group trust instrument expressly prohibits any part of its corpus or income that equitably belongs to any adopting group trust retiree benefit plan from being used for, or diverted to, any purpose other than for the exclusive benefit of the participants and the beneficiaries of the group trust retiree benefit plan.

(4) Each group trust retiree benefit plan that adopts the group trust is itself a trust, a custodial account, or a similar entity that is tax-exempt under § 408(e) or § 501(a) (or is treated as tax-exempt under § 501(a)). A group trust retiree benefit plan that is a § 401(a)(24) governmental plan is treated as meeting this requirement if

[1]Although tax generally is not imposed on the income of an 81–100 group trust, an 81–100 group trust is liable for any unrelated business income tax that arises under § 511 on account of unrelated business taxable income, as described in § 512, that is generated by the investment of the assets of the group trust. See § 1.511–2(b)(1).

it is not subject to federal income taxation.

(5) Each group trust retiree benefit plan that adopts the group trust expressly provides in its governing document that it is impossible for any part of the corpus or income of the group trust retiree benefit plan to be used for, or diverted to, purposes other than for the exclusive benefit of the plan participants and their beneficiaries.[2]

(6) The group trust instrument expressly limits the assets that may be held by the group trust to assets that are contributed by, or transferred from, a group trust retiree benefit plan to the group trust (and the earnings thereon), and the group trust instrument expressly provides for separate accounting[3] to reflect the interest that each adopting group trust retiree benefit plan has in the group trust, including separate accounting for contributions to the group trust from the adopting plan, disbursements made from the adopting plan's account in the group trust, and investment experience of the group trust allocable to that account. A transaction or accounting method that has the effect of directly or indirectly transferring value from the account of one adopting plan into the account of another adopting plan violates this separate accounting requirement. However, a transaction that merely exchanges investments at fair market value between the accounts of one adopting plan does not violate this separate accounting requirement.

(7) The group trust instrument expressly prohibits an assignment by an adopting group trust retiree benefit plan of any part of its equity or interest in the group trust.

(8) The group trust is created or organized in the United States and is maintained at all times as a domestic trust in the United States.

Section 1022(i)(1) Plans

Section 1022(i)(1) of ERISA provides a tax exemption under § 501(a) of the Code for certain plans that satisfy the qualification requirements under the Puerto Rico Code ("section 1022(i)(1) plans").

In particular, section 1022(i)(1) of ERISA provides that, for purposes of § 501(a), any trust forming part of a pension, profit-sharing, or stock bonus plan all the participants of which are residents of Puerto Rico is treated as an organization described in § 401(a), and therefore generally exempt from income taxation, if the trust both forms part of a pension, profit-sharing, or stock bonus plan and is exempt from income tax under the laws of Puerto Rico. For purposes of section 1022(i) of ERISA, a resident of Puerto Rico is either a bona fide resident of Puerto Rico or a person who performs labor or services primarily within Puerto Rico, regardless of residence for other purposes, and a participant is a current employee who is not excluded under the eligibility provisions of the plan. Section 1.501(a)–1(e). Section 1022(i)(1) of ERISA does not extend qualified status under § 401(a) to a plan, favorable treatment under § 402(a) regarding the taxation of distributions to a participant, or deductions for contributions under § 404(a) to an employer. Section 1022(i)(1) was enacted by Congress in order to provide plans, qualified only under the Puerto Rico Code, with favorable tax treatment with respect to their United States investments to enable those plans to diversify their investments. H.R. Rep. 93–807 provides the following:

> Puerto Rican pension trusts which satisfy the requirements of the Puerto Rican tax law are unable to diversify their portfolio by investing in US securities without paying US income tax on the income derived from such investments since they are not able to qualify for exemption under the US tax law. On the other hand, since the requirements for qualification under US and Puerto Rican law are roughly comparable, a Puerto Rican pension plan is able today to establish a trust in the United States which satisfies both the U.S. and the Puerto Rican tax provisions. Since the Puerto Rican Government has established requirements in its tax law for when a trust forming part of a pension plan for participants who are residents of the Commonwealth of Puerto Rico is entitled to be treated as a qualified trust, your committee believes it is appropriate to eliminate the distinction under US law as to the place of organization or creation of a trust entitled to be qualified under US law, if that trust is created or organized in Puerto Rico and if the trust has satisfied the requirements for qualification under the Puerto Rican tax laws.

Any retirement plan that covers Puerto Rico employees must satisfy the requirements of section 1081.1 of the Puerto Rico Code. The requirements of section 1081.1 of the Puerto Rico Code are similar to the qualification requirements of § 401(a). In particular, section 1081.1(a)(2) of the Puerto Rico Code contains an exclusive benefit requirement similar to the requirement under § 401(a)(2) of the Code.

Furthermore, pursuant to section 3(10) of ERISA, the requirements of Title I of ERISA apply to employee pension benefit plans maintained in Puerto Rico, including section 1022(i)(1) plans. One of those requirements is the exclusive purpose requirement of section 404(a)(1)(A) of ERISA, which provides that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of (i) providing benefits to participants and their beneficiaries, and (ii) defraying reasonable expenses of administering the plan. Section 1081.1(a)(9) of the Puerto Rico Code provides that satisfying the requirements of Title I of ERISA–including the exclusive purpose requirement of section 404(a)(1)(A) of ERISA–is a requirement for maintaining a plan's tax qualified status under the Puerto Rico Code.

The IRS has received inquiries as to whether a section 1022(i)(1) plan may participate in an 81–100 group trust. The inquiries state that sponsors of qualified retirement plans currently participating in 81–100 group trusts want to transfer assets and liabilities to section 1022(i)(1) plans, while continuing to invest the transferred

[2]In the case of a governmental plan, the governing document includes any statute that sets forth the terms applicable to the plan as well as any regulations, ordinances, and other state or local rules or policies binding on the plan under state or local law.

[3]Rev. Rul. 2011–1 states that the group trust instrument must provide for separate "accounts" to reflect the interest of each adopting group trust retiree benefit plan. This language has been modified in this revenue ruling to address concerns expressed by commenters that the separate "account" standard could be interpreted more strictly than intended.

assets in the group trust in order to take advantage of the group trust's broader diversification opportunities and lower investment costs. In response to these inquiries, Rev. Rul. 2011–1 provides in relevant part that the IRS anticipates issuing guidance as to whether a plan described in section 1022(i)(1) of ERISA may participate in an 81–100 group trust and that, until such guidance is issued, the IRS will not treat a group trust as failing to satisfy the requirements of Rev. Rul. 2011–1 merely because the group trust includes the assets of a section 1022(i)(1) plan.

Although a section 1022(i)(1) plan is not a qualified retirement plan under § 401(a) and is not currently listed as a group trust retiree benefit plan under Rev. Rul. 2011–1, it can satisfy the other requirements of Rev. Rul. 2011–1 applicable to group trust retiree benefit plans participating in 81–100 group trusts. Thus, for example, with respect to the requirement of Rev. Rul. 2011–1 that a group trust retiree benefit plan be tax exempt under § 408(e) or § 501(a), section 1022(i)(1) of ERISA provides that a section 1022(i)(1) trust is tax-exempt under § 501(a).

Also, with respect to the requirement of Rev. Rul. 2011–1 that the governing document of the group trust retiree benefit plan must provide that the assets of the plan must be used for the exclusive benefit of the plan participants and their beneficiaries, a section 1022(i)(1) trust must, pursuant to ERISA and the Puerto Rico Code, be part of a plan that satisfies an exclusive benefit requirement that is very similar to the exclusive benefit rule of § 401(a) and § 1.401(a)–2. Due to this similarity, a section 1022(i)(1) plan that satisfies the exclusive benefit rules of ERISA and the Puerto Rico Code is deemed to satisfy the exclusive benefit requirement of Rev. Rul. 2011–1.

Finally, permitting a section 1022(i)(1) plan to participate in an 81–100 group trust is consistent with the legislative history of section 1022(i)(1) because it permits a 1022(i)(1) plan to diversify its investments without adverse tax consequences to the group trust or its investors.

The remaining standards under Rev. Rul. 2011–1 can be satisfied regardless of whether the participating trust is a section 1022(i)(1) plan or another type of eligible group trust retiree benefit plan.

Accordingly, Rev. Rul. 2011–1 is modified to include section 1022(i)(1) plans on the list of group trust retiree benefit plans eligible to participate in an 81–100 group trust.

Separate Accounts of Insurance Companies

Rev. Rul. 2011–1 requested comments on whether tax-favored accounts held by plans described in § 401(a) or § 403(b), such as pooled separate accounts supporting annuity contracts that are treated as trusts under § 401(f), should be permitted to invest in 81–100 group trusts. Several comments were received in response recommending that separate accounts maintained by insurance companies should be permitted to invest in 81–100 group trusts if the assets held in such separate accounts were limited to certain types of investors. One commenter suggested that the investors in such separate accounts be limited to group trust retiree benefit plans that are identified in Rev. Rul. 81–100 and any successor rulings. Other commenters recommended that the investors in the separate accounts be limited to qualified retirement plans described in § 401(a) or § 403(a) and/or governmental plans.

The commenters noted that separate accounts[4] maintained by an insurance company are nominally owned by the insurance company but the assets are beneficially owned by the plans invested in the separate accounts and insulated from claims of the company's general creditors under state law. The commenters also noted that assets held in a separate account are not commingled with the assets and liabilities of the company's general account and are subject to state statutory accounting and reporting requirements as part of the life insurance company's assets.

The federal income tax treatment of the group trust, or of the group trust retiree benefit plans investing in the group trust, does not differ if a plan invests in the group trust through a separate account rather than investing directly in the group trust. The income and gains in a life insurance company separate account that contains only group trust retiree benefit plan assets are not subject to income tax.

Accordingly, in order to clarify the rules pertaining to the investment of separate accounts in group trusts, Rev. Rul. 2011–1 is modified to permit separate accounts to invest in group trusts subject to the conditions set forth in paragraph 2 of the **HOLDINGS** of this revenue ruling.

HOLDINGS

1. A plan described in section 1022(i)(1) of ERISA is a group trust retiree benefit plan eligible to participate in an 81–100 group trust if the requirements of Rev. Rul. 2011–1, as modified by this revenue ruling, are satisfied.

2. A separate account maintained by an insurance company may invest in an 81–100 group trust without affecting the tax status of either the group trust or the group trust retiree benefit plans participating in the group trust as long as (1) all of the assets in the separate account consist solely of assets of group trust retiree benefit plans as defined in Rev. Rul. 2011–1 and as modified by this revenue ruling, (2) the insurance company maintaining the separate account enters into a written arrangement with the trustee of the group trust consistent with the requirements of Rev. Rul. 2011–1 (including the requirement that no part of the corpus or income of any of the group trust retiree benefit plans be used for, or diverted to, any purpose other than for the exclusive benefit of the plan participants and their beneficiaries), and (3) the assets of the separate account are insulated from the claims of the insurance company's general creditors.

TRANSITION RELIEF

Extension of Transfer Relief for Certain Dual-Qualified Plans Participating in Group Trusts

Rev. Rul. 2008–40, 2008–2 C.B. 166, holds that a transfer of assets and liabilities from a qualified retirement plan to a

[4]The term "separate account" is not defined for insurance purposes under the Code. For purposes of this revenue ruling, however, it is defined as an account that is segregated from the general asset accounts of the company. This is similar to the definition of a segregated asset account under § 817(d).

plan that satisfies section 1165[5] of the Puerto Rico Code but is not qualified under § 401(a) is treated as a distribution from the transferor plan, even if the recipient plan is described in section 1022(i)(1) of ERISA. Thus, for example, for a participant who is a bona fide resident of Puerto Rico, the transferred amounts attributable to trust earnings and to employer contributions with respect to services rendered within the United States are treated as income from sources within the United States and, accordingly, are includible in the participant's U.S. income for the taxable year of the transfer. However, Rev. Rul. 2008–40, as modified by Rev. Rul. 2011–1 and Notice 2012–6, also provides that this holding is not effective for a transfer from any qualified retirement plan to a section 1022(i)(1) plan if the date of the transfer is before January 1, 2013.

A longer period of transition relief is, however, provided with respect to a certain subset of section 1022(i)(1) plans. Specifically, under the heading "Plans Described in Section 1022(i)(1) of ERISA," Rev. Rul. 2011–1 provides that:

> The Service anticipates issuing guidance as to whether a plan described in section 1022(i)(1) of ERISA may participate in an 81–100 group trust. Until such guidance is issued, the Service will not treat a group trust as failing to satisfy the requirements of this revenue ruling merely because the group trust includes the assets of a section 1022(i)(1) plan as long as the section 1022(i)(1) plan (1) was participating in the group trust as of January 10, 2011, or (2) holds assets that had been held by a qualified plan immediately prior to the transfer of those assets to the section 1022(i)(1) plan pursuant to the transition relief in Rev. Rul. 2008–40, as modified by this revenue ruling.

Under Notice 2012–6, the relief provided in paragraphs 2, 3, and 4(b) under the Transition Relief heading in Rev. Rul. 2008–40[6] is extended for transfers to a section 1022(i)(1) transferee plan from a qualified retirement plan that participated in an 81–100 group trust on January 10, 2011, until a deadline to be set forth in future published guidance.

In accordance with Notice 2012–6, this revenue ruling extends the relief provided in paragraphs 2, 3, and 4(b) under the Transition Relief heading in Rev. Rul. 2008–40 to transfers to a section 1022(i)(1) transferee plan from a qualified retirement plan that participated in an 81–100 group trust on January 10, 2011, if the transfer occurs before January 1, 2016. This relief does not apply to transfers to section 1022(i)(1) transferee plans from qualified plans that were not invested in group trusts on January 10, 2011.

Written Arrangements with Respect to Insurance Company Separate Accounts

In the case of a group trust in which participating group trust retiree benefit plans are invested through an insurance company's separate account as of December 8, 2014, the trustee of the group trust and the insurance company generally are not required to enter into the written arrangement described in paragraph 2 of the **HOLDINGS** before January 1, 2016. In the case of a group trust in which participating retiree benefit plans participate are not invested in the group trust through an insurance company's separate account as of December 8, 2014**,** but subsequently are invested in the group trust through such a separate account, the trustee of the group trust and the insurance company must enter into such written arrangement no later than the time of the investment.

EFFECT ON OTHER GUIDANCE

Rev. Rul. 2008–40, Rev. Rul. 2011–1, and Notice 2012–6 are modified.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Diane Bloom and Robert Walsh of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:00 a.m. and 4:30 p.m. Eastern Time, Monday through Friday, or by e-mail at *RetirementPlanQuestions@irs.gov*.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2014. See Rev. Rul. 2014–22, page 533.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2014. See Rev. Rul. 2014–22, page 533.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2014. See Rev. Rul. 2014–22, page 533.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2014. See Rev. Rul. 2014–22, page 533.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2014. See Rev. Rul. 2014–22, page 533.

[5] Prior to 2011, the requirements applicable to Puerto Rico qualified plans appeared under section 1165 of the Puerto Rico Code and diverged more significantly from the U.S. Internal Revenue Code qualified retirement plan requirements.

[6] These paragraphs in Rev. Rul. 2008–40 provide relief (i) from a transfer from a qualified retirement plan to a section 1022(i)(1) plan being treated as a distribution, (ii) relating to the treatment under § 933 of a distribution from a section 1022(i)(1) transferee plan that received a transfer from a qualified retirement plan during the relief period, and (iii) under the § 410(b) minimum coverage rules for a qualified retirement plan that has made a transfer to a section 1022(i)(1) transferee plan.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2014. See Rev. Rul. 2014–22, page 533.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2014. See Rev. Rul. 2014–22, page 533.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2014. See Rev. Rul. 2014–22, page 533.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Rev. Rul. 2014–22

This revenue ruling provides various prescribed rates for federal income tax purposes for September 2014 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2014, shall not be less than 9%.

Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2014–22 TABLE 1
Applicable Federal Rates (AFR) for September 2014

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
		Short-term		
AFR	.36%	.36%	.36%	.36%
110% AFR	.40%	.40%	.40%	.40%
120% AFR	.43%	.43%	.43%	.43%
130% AFR	.47%	.47%	.47%	.47%
		Mid-term		
AFR	1.86%	1.85%	1.85%	1.84%
110% AFR	2.05%	2.04%	2.03%	2.03%
120% AFR	2.23%	2.22%	2.21%	2.21%
130% AFR	2.42%	2.41%	2.40%	2.40%
150% AFR	2.80%	2.78%	2.77%	2.76%
175% AFR	3.27%	3.24%	3.23%	3.22%
		Long-term		
AFR	2.97%	2.95%	2.94%	2.93%
110% AFR	3.28%	3.25%	3.24%	3.23%
120% AFR	3.57%	3.54%	3.52%	3.51%
130% AFR	3.88%	3.84%	3.82%	3.81%

REV. RUL. 2014–22 TABLE 2
Adjusted AFR for September 2014

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	.36%	.36%	.36%	.36%
Mid-term adjusted AFR	1.35%	1.35%	1.35%	1.35%
Long-term adjusted AFR	2.49%	2.92%	2.91%	2.90%

REV. RUL. 2014–22 TABLE 3 Rates Under Section 382 for September 2014	
Adjusted federal long-term rate for the current month	2.94%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	3.06%

REV. RUL. 2014–22 TABLE 4 Appropriate Percentages Under Section 42(b)(1) for September 2014	
Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2014, shall not be less than 9%.	
Appropriate percentage for the 70% present value loW–income housing credit	7.56%
Appropriate percentage for the 30% present value loW–income housing credit	3.24%

REV. RUL. 2014–22 TABLE 5 Rate Under Section 7520 for September 2014	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	2.2%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2014. See Rev. Rul. 2014–22, page 533.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2014. See Rev. Rul. 2014–22, page 533.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2014. See Rev. Rul. 2014–22, page 533.

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also: Part I, §§ 42 and 142; 1.42–5, 1.42–6, 1.42–13, 1.42–14.)

Rev. Proc. 2014–49

SECTION 1. PURPOSE

In the context of a Major Disaster, this revenue procedure provides temporary relief from certain requirements of § 42 of the Internal Revenue Code for Agencies and Owners. This revenue procedure also provides emergency housing relief for individuals who are displaced by a Major Disaster from their principal residences in certain Major Disaster Areas. For low-income buildings financed with exempt facility bonds under § 142, see also Rev. Proc. 2014–50, I.R.B. 2014–37, which provides for emergency housing relief under § 142(d) in response to Major Disasters. This revenue procedure modifies and supersedes Rev. Proc. 2007–54, 2007–2 C.B. 293. See section 5 of this revenue procedure for definitions of certain capitalized terms appearing throughout this revenue procedure.

SECTION 2. BACKGROUND

.01 Upon issuance of the President's declaration of a Major Disaster, the Federal Emergency Management Agency (FEMA) may designate particular cities, counties, or other local jurisdictions covered by the declaration as eligible for Individual Assistance, Public Assistance, or both.[1] With respect to some previous Presidential declarations of Major Disasters, the Internal Revenue Service (Service) issued notices providing relief from certain requirements under §§ 42 and 142(d) to facilitate emergency housing relief for Displaced Individuals without regard to the income of those Displaced Individuals.[2]

.02 Under § 1.42–13(a) of the Income Tax Regulations, the Secretary may provide guidance to carry out the purposes of § 42 through various publications in the Internal Revenue Bulletin.

SECTION 3. CHANGES

.01 Rev. Proc. 2007–54 established temporary relief from certain requirements of § 42 for Owners and Agencies in Major Disaster Areas. In particular, Rev. Proc. 2007–54 (1) provided relief from the carryover allocation provisions; (2) clarified the consequences if an Owner failed to restore a building within a reasonable restoration period; (3) provided relief from certain compliance monitoring requirements; (4) allowed Agencies to provide relief for buildings severely damaged or destroyed in the first year of the credit period; and (5) described the amount of credit allowable for a restored building.

.02 Rev. Proc. 2007–54 also allowed Owners to rely on the self-certification of income eligibility of an individual who was displaced from his or her principal residence as a result of a Major Disaster and whose principal residence was in a city, county, or other local jurisdiction designated for Individual Assistance by FEMA as a result of the Major Disaster. The self-certification could not extend for more than four months beyond the date of the President's Major Disaster declaration. During the four-month self-certification period, the self-certified tenant was deemed a qualified low-income tenant. After the four-month self-certification period, the self-certified tenant was treated as a qualified low-income tenant only if the Owner obtained all documentation required under § 42 to support the tenant's continued status as a qualified low-income individual.

.03 The key modifications to Rev. Proc. 2007–54 in this revenue procedure include: (1) changing the reasonable restoration period for recapture relief and the tolling period for severely damaged, destroyed, or uninhabitable buildings in the first year of the credit period; (2) in determining qualified basis, using the building's qualified basis at the end of the taxable year immediately preceding the first day of the incident period as determined by FEMA, rather than at the end of the taxable year preceding the President's Major Disaster declaration; (3) incorporating a temporary suspension of certain income limitations for Displaced Individuals; (4) eliminating the need for self-certification of income eligibility; (5) permitting an Agency to allow an Owner within its jurisdiction to provide emergency housing relief to Displaced Individuals from other jurisdictions; (6) describing the consequences of providing emergency housing relief in the first year of the credit period and after the first year of the credit period; and (7) modifying the safe harbor relating to the amount of credit allowable to a restored building to provide relief in circumstances where the restoration cost is less than the eligible basis cost.

SECTION 4. SCOPE

This revenue procedure applies when the President has declared a Major Disaster. This revenue procedure applies to Displaced Individuals and to all § 42 buildings (including buildings financed with exempt facility bonds under § 142), Agencies, and Owners both inside and outside States containing a Major Disaster Area.

SECTION 5. DEFINITIONS

The following definitions apply for this revenue procedure.

.01 *Agency*. With respect to a Project, the Agency is the governmental housing credit agency that has jurisdiction over the Project.

.02 *Displaced Individual*. A Displaced Individual is an individual who is displaced from his or her principal residence as a result of a Major Disaster and whose principal residence was located in a Major Disaster Area designated as eligible for Individual Assistance by FEMA.

[1]FEMA generally publishes this designation in a notice in the Federal Register.

[2]For relief under § 42, see e.g., Notice 2012–7, 2012–4 I.R.B. 308 (flooding in Iowa); Notice 2012–68, 2012–48 I.R.B. 574 (Hurricane Sandy); Notice 2013–40, 2013–25 I.R.B. 1254, and Notice 2013–47, 2013–31 I.R.B. 120 (severe storms and tornadoes in Oklahoma); and Notice 2013–64, 2013–44 I.R.B. 438 (weather-related disasters in Colorado). For relief under § 142(d), see Notice 2013–9, 2013–9 I.R.B. 529 (Hurricane Sandy); Notice 2013–39, 2013–25 I.R.B. 1252, and Notice 2013–47(severe storms and tornadoes in Oklahoma); and Notice 2013–63, 2013–44 I.R.B. 436 (weather-related disasters in Colorado).

.03 *Major Disaster*. A Major Disaster is an event for which the President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

.04 *Major Disaster Area*. A Major Disaster Area is any city, county, or other local jurisdiction for which a Major Disaster has been declared by the President and which has been designated by FEMA as eligible for Individual Assistance, Public Assistance, or both.

.05 *Market-Rate Unit*. A Market-Rate Unit is a unit that is not a low-income unit under § 42(i)(3).

.06 *Owner*. An Owner is the owner of a Project.

.07 *Project*. A Project is a project that is subject to low-income requirements under § 42.

.08 *Temporary Housing Period*. A Temporary Housing Period is the period, if any, beginning on the first day of the incident period, as determined by FEMA, and ending on the date determined by the Agency under section 12.02 of this revenue procedure.

SECTION 6. RELIEF FOR CARRYOVER ALLOCATIONS

.01 A carryover allocation is defined in § 1.42–6(a)(1) as an allocation that meets the requirements of § 42(h)(1)(E) (relating to carryover allocations for single buildings) or § 42(h)(1)(F) (relating to carryover allocations for multiple-building Projects).

.02 If an Owner has a carryover allocation for a building located in a Major Disaster Area and the incident period for the Major Disaster began prior to the deadline in § 42(h)(1)(E), the Agency may grant the Owner an extension under section 7 of this revenue procedure. If the Agency grants such an extension, the Service will treat the Owner as having satisfied the 10-percent basis requirement of § 42(h)(1)(E)(ii) if the Owner incurs more than 10 percent of the Owner's reasonably expected basis in the building (land and depreciable basis) no later than the expiration of that extension. See § 1.42–6 for specific rules on carryover allocations.

.03 If an Owner has a carryover allocation for a building located in a Major Disaster Area and the Major Disaster occurs on or after the date of the carryover allocation, the Agency may grant the Owner an extension under section 7 of this revenue procedure. If the Agency grants such an extension, the Service will treat the Owner as having satisfied the placed in service requirement of § 42(h)(1)(E)(i) if the Owner places the building in service no later than the expiration of that extension. See § 1.42–6 for specific rules on carryover allocations.

.04 If either section 6.04(1) or section 6.04(2) of this revenue procedure applies, then the Service will treat the carryover allocation as a credit returned to the Agency on the day following the end of the extension period granted under the authority of section 6.02 of this revenue procedure, provided the Agency complies with the requirements of § 1.42–14(d)(3).

(1) Under the procedure described in section 7 of this revenue procedure, an Owner obtains the relief provided in section 6.02 of this revenue procedure but fails to satisfy the 10-percent basis requirement of § 42(h)(1)(E)(ii) before the expiration of the extension period granted under the authority of section 6.02. See § 1.42–14 for specific rules on returned credits.

(2) Under the procedure described in section 7 of this revenue procedure, an Owner obtains the relief provided in section 6.03 of this revenue procedure but fails to satisfy the placed in service requirement of § 42(h)(1)(E)(i) before the expiration of the extension period granted under the authority of section 6.03.

SECTION 7. PROCEDURE TO OBTAIN CARRYOVER ALLOCATION RELIEF

.01 An Owner may obtain the carryover allocation relief described in section 6.02 or 6.03 of this revenue procedure only if the Owner receives approval for the relief from the Agency that issued the carryover allocation pursuant to the procedures in this section 7.

.02 The Agency may approve the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure only for Projects whose Owners cannot reasonably satisfy the deadlines of § 42(h)(1)(E) because of a Major Disaster. Depending on the extent of the damage in a Major Disaster Area, an Agency may make this determination on an individual Project basis or determine that all Owners or a particular group of Owners in the Major Disaster Area warrant the relief provided in sections 6.02 and 6.03 of this revenue procedure. An extension under section 6.02 must not extend beyond six months after the date the Owner would otherwise be required to meet the 10-percent requirement of § 42(h)(1)(E)(ii). An extension under section 6.03 must not extend beyond December 31 of the year following the end of the two-year period described in § 42(h)(1)(E)(i). See § 1.42–6 for specific rules on carryover allocations. Based upon all facts and circumstances, an Agency has the discretion to provide shorter periods of relief than the maximum periods allowed by this section 7.02, or no relief at all.

.03 An Agency that chooses to approve the relief provided in sections 6.02 and 6.03 of this revenue procedure must do so before filing the Form 8610, Annual Low-Income Housing Credit Agencies Report, that covers the preceding calendar year. The Form 8610 is due by February 28 of the year following the year to which the Form 8610 applies.

.04 An Agency that approves the relief under sections 6.02 and 6.03 of this revenue procedure must report to the Service the Projects granted relief by attaching the documentation required in the instructions to Form 8610. The Agency should identify only those buildings, including buildings granted relief in January and February of the year in which the Agency files the Form 8610, that received the Agency's approval of the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure since the Agency last filed the Form 8610.

SECTION 8. RECAPTURE RELIEF

.01 In general, under § 42(j)(1), if (1) a building is beyond the first year of the credit period, and (2) at the end of the taxable year, the building's qualified basis with respect to the taxpayer is less than the qualified basis with respect to the taxpayer at the end of the preceding taxable year, then the credits, if any, for the year of the reduction are determined using the reduced qualified basis, and the taxpayer's Federal income tax liability for the year of the reduction is increased by the credit recapture amount prescribed in § 42(j)(2).

.02 If the building's qualified basis is reduced by reason of a casualty loss, then under § 42(j)(4)(E), a building is not subject to recapture to the extent the loss is restored by reconstruction or replacement within a reasonable restoration period. The Agency must determine what constitutes a reasonable restoration period in the case of a Major Disaster that causes a reduction in qualified basis that would result in recapture or loss of credit. The reasonable restoration period established by the Agency must not extend beyond the end of the 25th month following the close of the month of the Major Disaster declaration.

.03 To determine the credit amount allowable during the reasonable restoration period for a building described in section 8.02 of this revenue procedure, an Owner must use the building's qualified basis at the end of the taxable year immediately preceding the first day of the incident period for the Major Disaster.

.04 If the Owner fails to restore the building within the reasonable restoration period determined by the Agency, then section 8.01 of this revenue procedure applies to the Owner and section 8.03 of this revenue procedure does not apply. The credit amount allowable, if any, after the Major Disaster is determined using the building's qualified basis at the end of each year of the credit period.

.05 Section 1.42–5(c)(1) requires an Owner to report any reduction in qualified basis to the Agency. This requirement applies regardless of whether an Owner obtains the relief provided in section 8.02 of this revenue procedure.

.06 As part of its review procedure adopted under § 1.42–5(c)(2), an Agency must determine whether the Owner described in section 8.01 of this revenue procedure has restored the building's qualified basis by the end of the reasonable restoration period established by the Agency. The Agency must report on Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, any failure to restore qualified basis within the reasonable restoration period.

SECTION 9. COMPLIANCE MONITORING RELIEF

.01 An Agency may extend the due date for its scheduled compliance reviews for up to one calendar year from the date of the building's restoration and placement again into service.

.02 The extension permitted under section 9.01 of this revenue procedure does not extend the compliance monitoring deadlines for Owners in Major Disaster Areas. If an Agency discovers that an Owner has failed to comply with the rules of § 42 because of a Major Disaster, the Agency must report the noncompliance on Form 8823 and describe how the Major Disaster contributed to the noncompliance.

SECTION 10. BUILDINGS IN THE FIRST YEAR OF THE CREDIT PERIOD

.01 For buildings during the first year of the credit period that are severely damaged or destroyed in a Major Disaster Area, or uninhabitable as a result of a Major Disaster, an Agency has the discretion to treat the allocation as a returned credit to the Agency in accordance with the requirements of § 1.42–14(d)(3), or may toll the beginning of the first year of the credit period under § 42(f)(1). The tolling period must not extend beyond the end of the 25th month following the close of the month of the Major Disaster declaration. Owners may not claim any low-income housing credit during the restoration period of these first-year buildings.

.02 An Agency that provides the relief in section 10.01 of this revenue procedure must report to the Service those Projects granted relief by attaching the required documentation as provided in the instructions to Form 8610.

SECTION 11. AMOUNT OF CREDIT ALLOWABLE TO A RESTORED BUILDING

.01 *No additional credit for restoration expenditures*. If a Major Disaster causes a building to suffer a reduction in qualified basis as described in section 8.01 of this revenue procedure in a taxable year during the compliance period, then § 42 does not allow the Owner to receive any additional credit amounts for costs to restore the building's qualified basis.

.02 *Additional credits allowed for rehabilitation expenditures*. As a result of either an allocation by an Agency or financing by exempt facility bonds, an Owner may receive an additional amount of credits for rehabilitation expenditures (as described in § 42(e)(2)) if those expenditures are used for rehabilitation and not for restoring qualified basis. A taxpayer may treat as rehabilitation expenditures any expenditures that are described in § 42(e)(2) and that exceed the amount expended for restoration. The amount expended for restoration is generally determined under all of the relevant facts and circumstances. However, if a Major Disaster causes a reduction in qualified basis, the Owner may alternatively treat as restoration expenditures the amount of—

(1) The building's eligible basis immediately before the Major Disaster; multiplied by

(2) The excess, if any, of—

a. 1.0 over

b. The fraction whose numerator is the building's post-Major Disaster qualified basis (determined for this purpose immediately after the Major Disaster) and whose denominator is the building's pre-Major Disaster qualified basis (determined for this purpose immediately before the Major Disaster).

.03 *Example*.

(a) *Facts*. Immediately before the Major Disaster described below, a low-income building contained 60 Market-Rate Units and 40 low-income units. Thus, the unit fraction under § 42(c)(1)(C) was 40/100. The eligible basis of the building was $10,000,000. Based on the unit fraction, the qualified basis was $4,000,000, which is the unit fraction multiplied by the eligible basis. A Major Disaster rendered 10 of the low-income units and several of the Market-Rate Units uninhabitable and damaged some building common areas. As a result of this damage to the common areas and to the residential units, the building's eligible basis was reduced to $8,500,000. Thus, immediately after the Major Disaster, the qualified basis is $2,550,000, which is the unit fraction of 30/100 (the unit fraction immediately after the Major Disaster), multiplied by $8,500,000 (the eligible basis at that time).

(b) *Analysis*. Under section 11.02(2) of this revenue procedure, the restoration amount is $3,625,000, and the building owner may treat any amount expended in excess of the restoration amount as rehabilitation expenditures (assuming the requirements of § 42(e) are met). The restoration amount is derived as the amount of—

a. $10,000,000, which is the building's eligible basis immediately before the Major Disaster; multiplied by

b. 0.3625, which is the excess of—

i. 1.0 over

ii. 0.6375, which is the fraction whose numerator is $2,550,000 (the qualified basis immediately after the Major Disaster) and whose denominator is $4,000,000 (the qualified basis immediately before the Major Disaster).

SECTION 12. EMERGENCY HOUSING RELIEF — REQUIREMENTS AND RESTRICTIONS

.01 *Requirements for Relief*. For an Owner to use the relief provided in section 13 of this revenue procedure, the conditions in this section 12 must be satisfied.

.02 *Agency Approval.*

(1) The Agency provides written approval to the Owner for use of the Project to house Displaced Individuals and specifies the date on which the Temporary Housing Period for the Project ends. The Temporary Housing Period cannot exceed 12 months from the end of the month in which the President declared the Major Disaster.

(2) For low-income buildings financed with exempt facility bonds under § 142, see section 5.02 of Rev. Proc. 2014–50, I.R.B. 2014–37.

.03 *Protection of Existing Tenants*. No existing tenant whose income is, or is treated as, at or below an applicable income limit under § 42(g)(2) may be evicted or otherwise have his or her occupancy terminated solely to provide emergency housing relief for a Displaced Individual.

.04 *Recordkeeping Requirements*. The Owner complies with the recordkeeping requirements in section 14 of this revenue procedure.

.05 *Rent Restrictions*. Gross rents for the low-income units that house Displaced Individuals do not exceed the maximum gross rent for those units that would apply under § 42(g)(2).

.06 *Project Meets All Remaining Requirements*. Except as expressly provided in this revenue procedure, a Project meets all other rules and requirements of § 42.

SECTION 13. EMERGENCY HOUSING RELIEF — IMPLEMENTATION

.01 *Discretion to Apply Relief.*

(1) This revenue procedure authorizes but does not require provision of emergency housing relief to Displaced Individuals during the Temporary Housing Period. If an Owner chooses not to provide emergency housing relief under sections 12, 13, and 14 of this revenue procedure, then all of the rules under § 42 apply.

(2) If an Owner chooses to provide emergency housing relief under sections 12, 13, and 14 of this revenue procedure then–

(A) The Owner may provide emergency housing relief for less than the full Temporary Housing Period;

(B) If a Displaced Individual has demonstrated qualification as low income and the Owner wishes to accept the individual as a tenant, the Owner may either accept the Displaced Individual as a low-income tenant applying all the rules under § 42 or provide emergency housing relief to the Displaced Individual under sections 12, 13, and 14 of this revenue procedure; and

(C) If a Displaced Individual has not demonstrated qualification as low income and the Owner wishes to accept the individual as a tenant, the Owner may either accept the Displaced Individual as a tenant that is not a low-income tenant or provide emergency housing relief to the Displaced Individual under sections 12, 13, and 14 of this revenue procedure.

.02 *Satisfaction of the Non-Transient Use Requirement*. The occupancy of a unit in a Project by a Displaced Individual during the Temporary Housing Period is treated as satisfying the non-transient use requirement under § 42(i)(3)(B)(i).

.03 *Treatment of Displaced Individuals Under the Next-Available-Unit Rule*. During the Temporary Housing Period, for purposes of determining compliance with the next-available-unit rule under § 42(g)(2)(D)(ii), an Owner disregards any unit then occupied by one or more Displaced Individuals and applies the rule based solely on occupancy by persons who are not Displaced Individuals.

.04 *Treatment of Units in the First Year of the Credit Period*. If a Displaced Individual begins occupancy of a unit at a time that is within both the Temporary Housing Period and the first year of the credit period under § 42(f)(1), then during the Temporary Housing Period, while occupied by the Displaced Individual, the unit is treated as a low-income unit for the following purposes:

(1) Determining the Project's qualified basis under § 42(c)(1); and

(2) Meeting the Project's 20–50 test under § 42(g)(1)(A), 40–60 test under § 42(g)(1)(B), or 25–60 test under §§ 42(g)(4) and 142(d)(6) for New York City, as applicable. See section 13.06 of this revenue procedure for the treatment of a unit vacated by a Displaced Individual.

.05 *Treatment of Units After the First Year of the Credit Period*. If a Displaced Individual begins occupancy of a unit during the Temporary Housing Period but after the first year of the credit period under § 42(f)(1), then the unit retains the status it had immediately before that occupancy. That is–

(1) The actual income of the Displaced Individual occupying the unit is disregarded during the Temporary Housing Period for purposes of § 42;

(2) If a unit is a low-income unit, a Market-Rate Unit, or a unit never previously occupied, then the unit remains as such while occupied by a Displaced Individual during the Temporary Housing Period, regardless of the occupancy by, or income of, the Displaced Individual; and

(3) The income of the Displaced Individual occupying the unit does not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis under § 42(c)(1), nor does it affect the satisfaction of the 20–50 test under § 42(g)(1)(A), 40–60 test under § 42(g)(1)(B), or 25–60 test under §§ 42(g)(4) and 142(d)(6) for New York City, as applicable.

.06 *Treatment of a Unit Vacated by a Displaced Individual*. If a Displaced Individual vacates a unit in a Project before the end of the Temporary Housing Period, that unit retains the status provided under sections 13.04 or 13.05 of this revenue procedure until it is occupied by the next tenant, even if the next tenant takes occupancy after the end of the Temporary Housing Period. If the next tenant is also a Displaced Individual and begins occupancy during the Temporary Housing Period, the status of the unit is determined under section 13.04 or 13.05 of this revenue procedure. If the next tenant is not a Displaced Individual or begins occupancy after the end of the Temporary Housing Period, the status of the unit is determined under § 42.

.07 *Income Qualifications when Temporary Housing Period Ends*.

(1) If a Displaced Individual continues to occupy a unit in the Project at the end of the Temporary Housing Period, then except as provided in section 13.07(3) of this revenue procedure, the status of the unit occupied by the Displaced Individual and the income of that individual are reevaluated as though the individual commenced occupancy of the unit on the day immediately following the end of the Temporary Housing Period. For example, a unit is a Market-Rate Unit beginning immediately after the end of the Temporary Housing Period if, immediately after the end of the Temporary Housing Period, the Displaced Individual's income exceeds the applicable income limit.

(2) If the Project fails to comply with the set-aside requirement of § 42(g)(1) solely because of continued occupancy of a unit after the Temporary Housing Period by a Displaced Individual, a 60-day period is allowed for correction.

(3) If the Displaced Individual was accepted as a low-income tenant applying all the rules under § 42 as permitted by section 13.01(2)(B) of this revenue procedure, then all the rules under § 42 apply to the Displaced Individual, including § 42(g)(2)(D)(ii).

.08 *No Recapture*. The emergency housing of Displaced Individuals in low-income units during the Temporary Housing Period (and, if applicable, the 60-day correction period under section 13.07 under this revenue procedure) does not cause the building to suffer a reduction in qualified basis (which would cause the recapture of low-income housing credits).

SECTION 14. EMERGENCY HOUSING RELIEF — RECORDKEEPING

.01 Owners must maintain certain information concerning each Displaced Individual temporarily housed in the Project under sections 12 and 13 of this revenue procedure. For each Displaced Individual, the records must contain the following items in a statement signed by the Displaced Individual under penalties of perjury:

(1) The name of the Displaced Individual;

(2) The address of the principal residence at the time of the Major Disaster of the Displaced Individual;

(3) The Displaced Individual's social security number; and

(4) A statement that he or she was displaced from his or her principal residence as a result of a Major Disaster and that his or her principal residence was located in a city, county, or other local jurisdiction that is covered by the President's declaration of a Major Disaster and that is designated as eligible for Individual Assistance by FEMA because of the Major Disaster.

.02 The Owner must maintain a record both of the Agency's approval of the Project's use for Displaced Individuals and of the approved Temporary Housing Period. The Owner must report to the Agency at the end of the Temporary Housing Period a list of the names of the Displaced Individuals and the dates the Displaced Individuals began occupancy. The Owner must also provide any dates Displaced Individuals ceased occupancy and, if applicable, the date each unit occupied by a Displaced Individual becomes occupied by a subsequent tenant.

.03 The Owner must maintain the records described in this section as part of the annual compliance monitoring process with the Agency imposed by § 42 and provide this information to the Service upon request.

SECTION 15. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies and supersedes Rev. Proc. 2007–54, 2007–2 C.B. 293.

SECTION 16. EFFECTIVE DATE

This revenue procedure is effective for Major Disasters declared on or after August 21, 2014.

SECTION 17. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2237.

A Federal Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in sections 6, 7, 8, 9, 10, 12, 13, and 14. This information is required to enable the Service to verify whether the Owners and Displaced Individuals satisfy various requirements for the relief provided in this revenue procedure. The collection of information is required to obtain a benefit. The likely respondents are individuals, businesses, and state and local governments.

The estimated total annual recordkeeping burden is 1,750 hours.

The estimated annual burden per recordkeeper is approximately 30 minutes. The estimated number of recordkeepers is 3,500.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

SECTION 18. DRAFTING INFORMATION

The principal author of this revenue procedure is David Selig of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Mr. Selig at (202) 317-4137 (not a toll free number).

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.(Also Part 1, §§ 142 and 42; 1.103–8.)

Rev. Proc. 2014–50

SECTION 1. PURPOSE

In the context of a Major Disaster, this revenue procedure provides temporary relief from certain requirements of § 142(d) of the Internal Revenue Code for Issuers and Operators. This revenue procedure also provides emergency housing relief for individuals who are displaced by a Major Disaster from their principal residences in certain Major Disaster Areas. This revenue procedure provides relief for both Bond Projects and Bond/LIHTC Projects. For Bond/LIHTC Projects, see also Rev. Proc. 2014–49, I.R.B. 2014–37, which provides for emergency housing relief under § 42 in response to Major Disasters. See section 4 of this revenue procedure for definitions of certain capitalized terms appearing throughout this revenue procedure.

SECTION 2. BACKGROUND

.01 Upon issuance of the President's declaration of a Major Disaster, the Federal Emergency Management Agency (FEMA) may designate particular cities, counties, or other local jurisdictions covered by the declaration as eligible for Individual Assistance, Public Assistance, or both.[1] With respect to some previous Presidential declarations of Major Disasters, the Internal Revenue Service (Service) issued notices providing relief from certain requirements under §§ 42 and 142(d) to facilitate emergency housing relief for Displaced Individuals without regard to the income of those Displaced Individuals.[2]

.02 Generally, under § 103, private activity bonds that are not qualified bonds within the meaning of § 141 are not tax-exempt. Section 141(e) provides in part that the term "qualified bond" means any private activity bond if such bond is an exempt facility bond, and § 142(a) provides in part that the term "exempt facility bond" means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide qualified residential rental projects. To be a qualified residential rental project, a residential rental housing project must meet the requirements in § 142(d). The requirements include the following rules.

(1) At all times during the qualified project period, a specified percentage of the residential units must be occupied by individuals whose income does not exceed applicable income limits (the set-aside requirements). § 142(d)(1) and (d)(6).

(2) The qualified project period begins on the first day on which 10 percent of the residential units in the Project are occupied and ends on the latest of (a) the date that is 15 years after the date on which 50 percent of the residential units in the Project are occupied, (b) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or (c) the date on which any assistance provided with respect to the Project under section 8 of the United States Housing Act of 1937 terminates. § 142(d)(2)(A).

(3) Generally, if the income of an occupant of a residential unit was at or below the applicable income limits when occupancy of that unit began, the occupant's income is treated as continuing to be at or below those limits throughout that occupant's occupancy. If, however, the income of the occupant rises above a specified percentage of the applicable income limit, the occupant's income is treated as continuing to be at or below the applicable income limit only if the next available unit in the same project that meets certain criteria is occupied by a person whose income is at or below the applicable income limit (the next-available-unit rule). § 142(d)(3)(B).

(4) The Owner may elect to treat the project as a deep rent skewed project, in which case certain modifications to the next-available-unit rule, an additional set-aside requirement, and certain rent restrictions apply. § 142(d)(4).

(5) Under regulations issued under the predecessor to § 142(d), units in a qualified residential rental project cannot be used on a transient basis. § 1.103–8(b)(4)(i) of the Income Tax Regulations.

SECTION 3. SCOPE

This revenue procedure applies when the President has declared a Major Disaster. This revenue procedure applies to Displaced Individuals and to all Projects, Issuers, and Operators both inside and outside States containing a Major Disaster Area.

SECTION 4. DEFINITIONS

The following definitions apply for this revenue procedure.

.01 *Agency*. With respect to a Bond/LIHTC Project, the Agency is the governmental housing credit agency that has jurisdiction over the Project.

.02 *Bond Project*. A Bond Project is a Project that is not subject to the low-income housing credit requirements under § 42.

.03 *Bond/LIHTC Project*. A Bond/LIHTC Project is a Project that is also subject to the low-income housing credit requirements under § 42.

.04 *Displaced Individual*. A Displaced Individual is an individual who is displaced from his or her principal residence as a result of a Major Disaster and whose principal residence was located in a Major Disaster Area designated as eligible for Individual Assistance by FEMA.

.05 *Issuer*. The Issuer is the entity that issued tax-exempt, exempt facility bonds for a Project under §§ 142(d) and 103.

.06 *Low-Income Individual*. A Low-Income Individual is an individual whose income either is at or below the applicable income limit or is treated as at or below the applicable income limit under § 142(d)(3)(B).

.07 *Major Disaster*. A Major Disaster is an event for which the President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

[1] FEMA generally publishes this designation in a notice in the Federal Register.

[2] For relief under § 42, see e.g., Notice 2012–7, 2012–4 I.R.B. 308 (flooding in Iowa); Notice 2012–68, 2012–48 I.R.B. 574 (Hurricane Sandy); Notice 2013–40, 2013–25 I.R.B. 1254, and Notice 2013–47, 2013–31 I.R.B. 120 (severe storms and tornadoes in Oklahoma); and Notice 2013–64, 2013–44 I.R.B. 438 (weather-related disasters in Colorado). For relief under § 142(d), see Notice 2013–9, 2013–9 I.R.B. 529 (Hurricane Sandy); Notice 2013–39, 2013–25 I.R.B. 1252, and Notice 2013–47(severe storms and tornadoes in Oklahoma); and Notice 2013–63, 2013–44 I.R.B. 436 (weather-related disasters in Colorado).

.08 *Major Disaster Area*. A Major Disaster Area is any city, county, or other local jurisdiction for which a Major Disaster has been declared by the President and which has been designated by FEMA as eligible for Individual Assistance, Public Assistance, or both.

.09 *Market-Rate Unit*. A Market-Rate Unit is a unit occupied by an individual that is not a Low-Income Individual.

.10 *Operator*. The Operator of a Project is the person to whom the Issuer or Owner delegates responsibility for ensuring that the Project continues to meet the requirements applicable to qualified residential rental projects under §§ 142(d) and 103. (That person may be, but does not have to be, the Owner.)

.11 *Owner*. An Owner is the owner of a Project.

.12 *Project*. A Project is a qualified residential rental project that is financed with exempt facility bonds under § 142(d), whether or not it is also subject to the low-income housing credit requirements under § 42.

.13 *Temporary Housing Period*. A Temporary Housing Period is the period, if any, beginning on the first day of the incident period, as determined by FEMA, and ending on the date determined by the Issuer under section 5.02 of this revenue procedure.

SECTION 5. EMERGENCY HOUSING RELIEF — REQUIREMENTS AND RESTRICTIONS

.01 *Requirements for Relief*. For an Operator to use the relief provided in section 6 of this revenue procedure, the conditions in this section 5 must be satisfied.

.02 *Issuer Approval*.

(1) The Issuer provides written approval to the Operator for use of the Project to house Displaced Individuals and specifies the date on which the Temporary Housing Period for the Project ends. The Temporary Housing Period cannot exceed 12 months from the end of the month in which the President declared the Major Disaster.

(2) Issuer approval is required even if a Bond/LIHTC Project subject to Rev. Proc. 2014–49 receives approval from the Agency (as contemplated in Section 12.02(1) of Rev. Proc. 2014–49). An Issuer that provides approval for a Bond/LIHTC Project must adopt for purposes of § 142(d) and this revenue procedure the same Temporary Housing Period that the Agency adopts for purposes of § 42 for that Bond/LIHTC Project.

.03 *Protection of Existing Tenants*. No existing tenant whose income is, or is treated as, at or below an applicable income limit under § 142(d) may be evicted or otherwise have his or her occupancy terminated solely to provide emergency housing relief for a Displaced Individual.

.04 *Recordkeeping Requirements*. The Operator complies with the recordkeeping requirements in section 7 of this revenue procedure.

.05 *Rent Restrictions*. If units are treated as occupied by Low-Income Individuals under section 6 of this revenue procedure because they house Displaced Individuals, then rent restrictions are applicable in deep rent skewed Projects and in Bond/LITHC Projects. In these cases, the amounts that the Displaced Individuals are charged as gross rent must satisfy §§ 142(d)(4)(B) and 42(g)(2) to the extent that those provisions are applicable.

.06 *Project Meets All Remaining Requirements*. Except as expressly provided in this revenue procedure, a Project meets all other rules and requirements of §§ 142(d) and 103.

SECTION 6. EMERGENCY HOUSING RELIEF — IMPLEMENTATION

.01 *Discretion to Apply Relief*.

(1) This revenue procedure authorizes but does not require provision of emergency housing relief to Displaced Individuals during the Temporary Housing Period. If an Operator chooses not to provide emergency housing relief under sections 5, 6, and 7 of this revenue procedure, then all of the rules under § 142(d) apply.

(2) If an Operator chooses to provide emergency housing relief under sections 5, 6, and 7 of this revenue procedure then–

(A) The Operator may provide emergency housing relief for less than the full Temporary Housing Period;

(B) If a Displaced Individual has demonstrated qualification as low income and the Operator wishes to accept the individual as a tenant, the Operator may either accept the Displaced Individual as a low-income tenant applying all the rules under § 142(d) or provide emergency housing relief to the Displaced Individual under sections 5, 6, and 7 of this revenue procedure; and

(C) If a Displaced Individual has not demonstrated qualification as low income and the Operator wishes to accept the individual as a tenant, the Operator may either accept the Displaced Individual as a tenant that is not a low-income tenant or provide emergency housing relief to the Displaced Individual under sections 5, 6, and 7 of this revenue procedure.

.02 *Satisfaction of the Non-Transient Use Requirement*. The occupancy of a unit in a Project by a Displaced Individual during the Temporary Housing Period is treated as satisfying the non-transient use requirement under § 1.103–8(b)(4).

.03 *Treatment of Displaced Individuals Under the Next-Available-Unit Rule*. During the Temporary Housing Period, for purposes of determining compliance with the next-available-unit rule under §142(d)(3)(B), an Operator disregards any unit then occupied by one or more Displaced Individuals and applies the rule based solely on occupancy by persons who are not Displaced Individuals. See sections 6.04 and 6.05 of this revenue procedure for the treatment of income of Displaced Individuals for purposes of § 142(d).

.04 *Income Qualification of Units in Bond Projects During Temporary Housing Period*. If a Displaced Individual begins occupancy of a unit in a Bond Project during the Temporary Housing Period, then the unit retains the status it had immediately before that occupancy. The actual income of the Displaced Individual occupying the unit is disregarded during the Temporary Housing Period for purposes of § 142(d). That is–

(1) If a unit in a Bond Project was a unit occupied by a Low-Income Individual, a Market-Rate Unit, a unit never previously occupied, or an unavailable unit, then the unit remains as such while occupied by a Displaced Individual during the Temporary Housing Period, regardless of the occupancy by, or income of, the Displaced Individual. See Rev. Proc. 2004–39, 2004–2 C.B. 49 (treating never previously occupied units as unavailable).

(2) The income of the Displaced Individual occupying the unit does not affect whether the Bond Project satisfies the set-aside requirement, including the additional set-aside requirement for deep rent skewed Projects.

.05 *Income Qualification of Units in Bond/LIHTC Projects During Temporary Housing Period*. During the Temporary Housing Period, a unit in a Bond/LIHTC Project then occupied by a Displaced Individual is treated for purposes of § 142(d) in a manner similar to how it is treated for purposes of § 42 under Rev. Proc. 2014–49. That is, during the Temporary Housing Period –

(1) The actual income of the Displaced Individual occupying the unit is disregarded for purposes of § 142(d);

(2) To the extent provided in Rev. Proc. 2014–49, if a Displaced Individual takes occupancy of a unit in a Bond/ LIHTC Project during the first year of the credit period, the unit is treated as a unit occupied by a Low-Income Individual; and if, after the first year of the credit period, a Displaced Individual begins occupancy of a unit, that unit retains the status that it had before occupancy by the Displaced Individual, whether as a unit occupied by a Low-Income Individual, a Market-Rate Unit, a unit never previously occupied, or an unavailable unit, as the case may be.

.06 *Treatment of a Unit Vacated by a Displaced Individual*.

(1) If a Displaced Individual vacates a unit in a Project before the end of the Temporary Housing Period, that unit retains the status provided under section 6.04 or section 6.05 of this revenue procedure until it is occupied by the next tenant, even if the next tenant takes occupancy after the end of the Temporary Housing Period. If the next tenant is also a Displaced Individual and begins occupancy during the Temporary Housing Period, the status of the unit is determined under section 6.04 or 6.05 of this revenue procedure. If the next tenant is not a Displaced Individual or begins occupancy after the end of the Temporary Housing Period, the status of the unit is determined under § 142(d).

(2) For as long as a unit retains its status because of the application of this section 6.06, the relief provided under section 6.08 of this revenue procedure applies to that unit. In particular, the unit is disregarded for determining the start of the qualified project period.

.07 *Income Qualifications when Temporary Housing Period Ends*.

(1) If a Displaced Individual continues to occupy a unit in the Project at the end of the Temporary Housing Period, then except as provided in section 6.07(3) of this revenue procedure, the status of the unit occupied by the Displaced Individual and the income of that individual are re-evaluated as though the individual commenced occupancy of the unit on the day immediately following the end of the Temporary Housing Period. For example, a unit is a Market-Rate Unit beginning immediately after the end of the Temporary Housing Period if, immediately after the end of the Temporary Housing Period, the Displaced Individual's income exceeds the applicable income limit.

(2) If the Project fails to comply with the set-aside requirement of § 142(d) solely because of continued occupancy of a unit after the Temporary Housing Period by a Displaced Individual, a 60-day period is allowed for correction.

(3) If the Displaced Individual was accepted as a low-income tenant applying all the rules under § 142(d) as permitted by section 6.01(2)(B) of this revenue procedure, then all the rules under § 142(d) apply to the Displaced individual, including § 142(d)(3)(B).

.08 *Qualified Project Period*.

(1) *Start of the Qualified Project Period*. Occupancy of a unit by a Displaced Individual during the Temporary Housing Period does not count for determining the beginning of the qualified project period under § 142(d)(2)(A). Thus, this occupancy is not used to determine the first day on which 10 percent of the residential units in a Project are occupied for purposes of § 142(d)(2)(A).

(2) *End of the Qualified Project Period*. Occupancy of a unit in a Project by any tenant (whether a Displaced Individual or someone who is not a Displaced Individual) counts for purposes of determining the end of the qualified project period under § 142(d)(2)(A)(i). However, solely for purposes of § 142(d)(2)(A)(iii), the Project is treated as continuing to receive assistance under section 8 of the United States Housing Act of 1937 until the end of the Temporary Housing Period plus 180 days.

SECTION 7. EMERGENCY HOUSING RELIEF — RECORDKEEPING

.01 Operators must maintain certain information concerning each Displaced Individual temporarily housed in the Project under sections 5 and 6 of this revenue procedure. For each Displaced Individual, the records must contain the following items in a statement signed by the Displaced Individual under penalties of perjury:

(1) The name of the Displaced Individual;

(2) The address of the principal residence at the time of the Major Disaster of the Displaced Individual;

(3) The Displaced Individual's social security number; and

(4) A statement that he or she was displaced from his or her principal residence as a result of a Major Disaster and that his or her principal residence was located in a city, county, or other local jurisdiction that is covered by the President's declaration of a Major Disaster and that is designated as eligible for Individual Assistance by FEMA because of the Major Disaster.

.02 The Operator must maintain a record both of the Issuer's approval of the Project's use for Displaced Individuals and of the approved Temporary Housing Period. The Operator must report to the Issuer at the end of the Temporary Housing Period a list of the names of the Displaced Individuals and the dates the Displaced Individuals began occupancy. The Operator must also provide any dates Displaced Individuals ceased occupancy and, if applicable, the date each unit occupied by a Displaced Individual becomes occupied by a subsequent tenant.

.03 The Operator must maintain the records described in this section as part of the annual compliance monitoring process imposed under § 142(d) and provide this information to the Service upon request. For purposes of § 42, Operators of Bond/ LIHTC Projects are also subject to the recordkeeping requirements of Rev. Proc. 2014–49.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for Major Disasters declared on or after August 21, 2014.

SECTION 9. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2237.

A Federal Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in section 7. This information is required to enable the Service to verify whether the Operators and Displaced Individuals satisfy various requirements for the relief provided in this revenue procedure. The collection of information is required to obtain a benefit. The likely respondents are individuals, businesses, and state and local governments.

The estimated total annual recordkeeping burden is 675 hours.

The estimated annual burden per recordkeeper is approximately 30 minutes. The estimated number of recordkeepers is 1,350.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

SECTION 10. DRAFTING INFORMATION

The principal authors of this revenue procedure are Timothy L. Jones and Spence Hanemann of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Mr. Hanemann at (202) 317-6980 (not a toll-free number).

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26 CFR 601.105.—Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, §§ 856(c); 1.856–3, 1.856–5.)

Rev. Proc. 2014–51

SECTION 1. PURPOSE

This revenue procedure provides guidance regarding aspects of a taxpayer's qualification as a real estate investment trust (REIT) in the context of transactions involving debt secured by real estate the fair market value of which has declined. This revenue procedure modifies and supersedes Rev. Proc. 2011–16, 2011–5 I.R.B. 440, to address situations in which there is a subsequent increase in the value of real property securing a loan addressed in Rev. Proc. 2011–16. Section 2.14(4) of this revenue procedure describes the modifications made by this revenue procedure to Rev. Proc. 2011–16.

SECTION 2. BACKGROUND

.01 For an entity to qualify as a REIT for a taxable year, section 856(c)(4)(A) of the Internal Revenue Code requires that at the close of each quarter of its taxable year at least 75 percent of the value of the entity's total assets must be represented by real estate assets, cash and cash items (including receivables), and Government securities (75% Asset Test). That is, the 75% Asset Test involves a fraction the denominator of which is the value of a REIT's total assets and the numerator of which is the value of the REIT's real estate assets, cash and cash items (including receivables), and Government securities.

.02 Under section 856(c)(5)(B), the term "real estate assets" includes real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other REITs.

.03 Section 856(c)(5)(C) provides that the term "interests in real property" includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon, but does not include mineral, oil, or gas royalty interests.

.04 Section 1.856–3(a) of the Income Tax Regulations defines the term "value" to mean "with respect to securities for which market quotations are readily available, the market value of such securities; and with respect to other securities and assets, fair value as determined in good faith by the trustees of the real estate investment trust."

.05 For an entity to qualify as a REIT for a taxable year, it must also satisfy two gross income tests.

(1) First, at least 95 percent of the entity's gross income must be derived from the types of income listed in section 856(c)(2) (95% Income Test). All interest is included as qualifying income for the 95% Income Test.

(2) Second, at least 75 percent of the entity's gross income must be derived from the types of income listed in section 856(c)(3) (75% Income Test). Interest on obligations secured by mortgages on real property or on interests in real property is included as qualifying income for purposes of the 75% Income Test.

.06 If a mortgage loan is secured by both real property and other property, then, for purposes of the 75% Income Test, § 1.856–5(c) provides rules for apportioning the interest on the loan between interest on an obligation that is secured by real property (or by an interest in real property) and interest on an obligation that is not so secured.

.07 The regulations define two terms that are to be used in determining apportionment—

(1) Section 1.856–5(c)(3) defines the "amount of the loan" as the highest principal amount of the loan outstanding during the taxable year.

(2) Section 1.856–5(c)(2) generally defines the "loan value of the real property" that secures a loan as the fair market value of the real property, determined as of the date on which a commitment became binding on the REIT either to make the loan or to purchase the loan, as the case may be. (This definition, which focuses on the value of the real property collateral securing a loan, is different from the § 1.856–3(a) "value" of a loan as discussed in section 2.04 of this revenue procedure, which focuses on what a loan can be sold for

(whether the loan is secured by real property or by other property)).

.08 To effect apportionment under § 1.856–5(c), the loan value of the real property is compared to the amount of the loan.

(1) If the loan value of the real property is equal to or exceeds the amount of the loan, then all of the interest income from the loan is apportioned to the real property.

(2) If the amount of the loan exceeds the loan value of the real property, then—

(a) The interest income apportioned to the real property is an amount equal to the interest income multiplied by a fraction the numerator of which is the loan value of the real property and the denominator of which is the amount of the loan; and

(b) The interest income apportioned to the other property is the excess of the total interest income over the interest income apportioned to the real property.

.09 Section 1.1001–3(c)(1)(i) defines a "modification" of a debt instrument as any alteration, including any deletion or addition, in whole or in part, of a legal right or obligation of the issuer or holder of the debt instrument, whether the alteration is evidenced by an express agreement (oral or written), conduct of the parties, or otherwise. Section 1.1001–3(e) governs which modifications of debt instruments are "significant." Under § 1.1001–3(b), for most federal income tax purposes, a significant modification produces a deemed exchange of the original debt instrument for a new debt instrument.

.10 Section 1.860G–2(b)(1) concerns modifications of mortgages held by real estate mortgage investment conduits (REMICs). Certain loan modifications are not significant for purposes of § 1.860G–2(b)(1) even if the modifications are significant under the rules in § 1.1001–3. In particular, under § 1.860G–2(b)(3)(i), if a change in the terms of an obligation is "occasioned by default or a reasonably foreseeable default," the change is not a significant modification for purposes of § 1.860G–2(b)(1), regardless of the modification's status under § 1.1001–3.

.11 Section 857(b)(6) imposes a tax equal to 100 percent of the net income derived from "prohibited transactions." Section 857(b)(6)(B)(iii) defines the term "prohibited transaction" as a sale or other disposition of property that is described in section 1221(a)(1) and that is not foreclosure property.

.12 Section 4.01 of Rev. Proc. 2011–16 provided a safe harbor to allow REITs to treat certain loan modifications occasioned by default or reasonably foreseeable default as not being a new commitment to make or purchase a loan for purposes of the 75% Income Test.

.13 Section 4.02 of Rev. Proc. 2011–16 also provided a safe harbor (the Asset Test Safe Harbor) for determining the extent to which a REIT may treat certain loans as real estate assets for purposes of the 75% Asset Test. Under this safe harbor, the Internal Revenue Service (Service) will not challenge a REIT's treatment of a loan as being in part a "real estate asset" for purposes of the 75% Asset Test if the REIT treats the loan as being a real estate asset in an amount equal to the lesser of—

(1) The value of the loan as determined under § 1.856–3(a) (see section 2.04 of this revenue procedure); or

(2) The loan value of the real property securing the loan as determined under § 1.856–5(c) and section 4.01 of Rev. Proc. 2011–16 (see section 2.07(2) of this revenue procedure).

.14 The Service has become aware that when the value of the real property securing the loan (and, thus, generally the value of the loan as well) increases after the REIT originates or acquires the loan, the Asset Test Safe Harbor may produce anomalous results.

(1) The Asset Test Safe Harbor addresses the numerator of the 75% Asset Test (the value of a REIT's real estate assets, cash and cash items, and Government securities, see section 2.01 and 2.02 of this revenue procedure). As is described in section 2.13 of this revenue procedure, under this safe harbor, the numerator is the *lesser* of the value of the loan (under § 1.856–3(a)) or the loan value of the real property securing the loan (under § 1.856–5(c) and section 4.01 of Rev. Proc. 2011–16). Although the "value of the loan" generally rises with increases in the value of the real property securing a distressed loan, the "loan value of the real property securing the loan" is fixed as of the date that the REIT commits to make or purchase the loan. The loan value of the real property securing the loan, therefore, does not vary with changes in the value of the loan's real property collateral. Thus, the numerator (the *lesser of* the value of the loan or the loan value of real property securing the loan) will generally not vary with increases in the value of the real property collateral.

(2) On the other hand, if there is an increase in the value of the real property collateral, that increase often results in a corresponding increase in the value of the loan and thus in the denominator of the 75% Asset Test (the value of the REIT's total assets, see section 2.01 of this revenue procedure).

(3) Thus, when the value of the real property collateral increases, the portion of a distressed mortgage loan that is treated as a qualifying asset for the 75% Asset Test is the generally constant numerator described above, divided by an increasing denominator. Under the formula in section 4.02 of Rev. Proc. 2011–16, therefore, the portion of a mortgage loan that is treated as a qualifying asset for this purpose generally *decreases* as the value of the real property securing the loan *increases*.

(4) To prevent this anomaly, this revenue procedure modifies the Asset Test Safe Harbor in section 4.02 of Rev. Proc. 2011–16. This revenue procedure also modifies section 5 of Rev. Proc. 2011–16 by amending Examples 1 and 2 and adding a new Example 3 to illustrate the modified Asset Test Safe Harbor.

SECTION 3. SCOPE

.01 Section 4.01 of this revenue procedure applies to a modification of a mortgage loan which (or an interest in which) is held by a REIT if—

(1) The modification was occasioned by default; or

(2) The modification satisfies the following two conditions:

(a) Based on all the facts and circumstances, the REIT or servicer of the loan (the "pre-modified loan") reasonably believes that there is a significant risk of default of the pre-modified loan upon maturity of the loan or at an earlier date. This reasonable belief must be based on a diligent contemporaneous determination of that risk, which may take into account credible written factual representations made by the issuer of the loan if the REIT or servicer neither knows nor has reason to know that such representations are false. In a determination of the significance of the risk of a default, one relevant factor is how far in the future the possible default may be. There is no maximum period, however, after which default is *per se* not foreseeable. For example, in appropriate circumstances, a REIT or servicer may reasonably believe that there is a significant risk of default even though the foreseen default is more than one year in the future. Similarly, although past performance is another relevant factor for assessing default risk, in appropriate circumstances, a REIT or servicer may reasonably believe that there is a significant risk of default even if the loan is performing.

(b) Based on all the facts and circumstances, the REIT or servicer reasonably believes that the modified loan presents a substantially reduced risk of default, as compared with the pre-modified loan.

.02 Section 4.02 of this revenue procedure applies to any corporation that has elected to be taxed as a REIT.

SECTION 4. APPLICATION

.01 *Modifications.* If a modification of a mortgage loan is described in section 3.01 of this revenue procedure—

(1) For purposes of ascertaining under § 1.856–5(c)(2) the loan value of the real property securing that loan, a REIT may treat the modification as not being a new commitment to make or purchase a loan; and

(2) The modification of the mortgage loan is not treated as a prohibited transaction under section 857(b)(6).

.02 *Asset test.* The Service will not challenge a REIT's treatment of a loan as being in part a "real estate asset" for purposes of section 856(c)(4) if the REIT treats the loan as being a real estate asset in an amount equal to the lesser of—

(1) The value of the loan as determined under § 1.856–3(a) (see section 2.04 of this revenue procedure); or

(2) The greater of—

(a) The current value of the real property securing the loan; or

(b) The loan value of the real property securing the loan as determined under § 1.856–5(C) and, if applicable, section 4.01 of this revenue procedure (see section 2.07(2) of this revenue procedure).

SECTION 5. EXAMPLES

.01 *Example 1*. In 2007, *X*, a REIT, made a $100 mortgage loan to *A*. *X*'s loan to *A* was secured by both real property and personal property. When *X*'s commitment to make the loan became binding on *X*, the real property had a fair market value of $115. At the end of the calendar quarter in which *X* made the loan, the value of the loan as determined under § 1.856–3(a) was $100. At all times through the end of 2010, under § 1.856–5(c)(3), the amount of the loan continued to be $100.

By the start of 2009, the fair market value of the real property securing the loan had fallen to $55 and the fair market value of the personal property was $5. The values remained at these levels throughout 2009 and 2010. Throughout 2009 and 2010, the value of the loan, as determined under § 1.856–3(a), was $60.

During 2009, *X* and *A* modified the terms of the mortgage loan. The modification of the loan is described in section 3.01 of this revenue procedure and is a significant modification under § 1.1001–3.

(1) *Income Test.* When *X* made the mortgage loan in 2007, the loan value of the real property for purposes of § 1.856–5(c) was its fair market value ($115) determined as of the date on which the commitment to make the loan became binding on *X*. This amount exceeded the amount of the loan for that year ($100). Accordingly, in the year that the loan was made, all of the interest from the loan was apportioned to the real property. *See* § 1.856–5(c)(1).

Between the time that the loan was made and the time of the modification, the loan value of the real property continued to be $115, notwithstanding changes in the fair market value of that real property. *See* § 1.856–5(c)(2). Similarly, the amount of the loan continued to be $100. Accordingly, the loan value of the real property ($115) continued to exceed the amount of the loan ($100), and all of the interest on the loan continued to be apportioned to the real property.

The fair market value of the real property that secured the mortgage loan had fallen to $55 by the time that *X* and *A* modified the loan in 2009. That modification, however, is described in section 3.01 of this revenue procedure, and *X* chose to treat the modification as not being a new commitment to make or purchase a loan. Therefore, the loan value of the real property ($115) does not change. Because the loan value of the real property ($115) continued through the end of 2010 to exceed the amount of the loan ($100), all of the interest from the loan during that year is apportioned to real property.

(2) *Asset Test.* In 2007, at the end of the calendar quarter in which *X* made the mortgage loan, the current value of the real property securing the loan was $100, the value of the loan (as determined under § 1.856–3(a)) was $100, and the loan value of the real property securing the loan (as determined under § 1.856–5(c)(2)) was $115. For this calendar quarter, in determining the amount of the loan that is a real estate asset for purposes of the 75% Asset Test, *X* may use the safe harbor in section 4.02 of this revenue procedure. If *X* does so, the amount of the loan that is a real estate asset for purposes of the 75% Asset Test is the lesser of—

- **The value of the loan as determined under § 1.856–3(a) (see section 2.04 of this revenue procedure) ($100); or**
- **The greater of—**
    - **The current value of the real property securing the loan ($100); or**
    - **The loan value of the real property securing the loan as determined under § 1.856–5(c) and, if applicable, section 4.01 of this revenue procedure (in this case, section 4.01 is not applicable) ($115).**

Accordingly, *X* may treat $100 of the loan as a qualifying asset.

At the end of the calendar quarter immediately preceding the quarter in 2009 in which *X* modified the mortgage loan, the current value of the real property securing the loan was $55, the value of the loan (as determined under § 1.856–3(a)) was $60, and the loan value of the real property securing the loan (as determined under § 1.856–5(c)(2)) was $115. As described earlier in this section 5.01, beginning with the calendar quarter in which the loan was modified, *X* may use the safe harbor in section 4.01 of this revenue procedure to treat the modification as not being a new commitment to make or purchase the loan. In addition, in determining the amount of the loan that is a real estate asset for purposes of the 75% Asset Test, *X* may use the safe harbor in section 4.02 of this revenue procedure. If *X* does so, the amount of the loan that is a real estate asset for purposes of the 75% Asset Test is the lesser of—

- **The value of the loan as determined under § 1.856–3(a) (see section 2.04 of this revenue procedure) ($60); or**
- **The greater of—**
    - **The current value of the real property securing the loan ($55); or**
    - **The loan value of the real property securing the loan as determined under § 1.856–5(c) and, if applicable, section 4.01 of this revenue procedure (in this case, section 4.01 is applicable) ($115).**

Accordingly, *X* may treat $60 of the loan as a qualifying asset.

.02 *Example 2*. The facts include all of the facts in Example 1. Additionally, during the first quarter of 2010, *Y*, a REIT, committed to purchase, and purchased, the mortgage loan from *X* for $60.

(1) *Income Test.* Under § 1.856–5(c)(2), the loan value of the real property securing the loan is the fair market value of the real property determined as of the date on which *Y*'s commitment to purchase the loan became binding on *Y* ($55). This value is compared to the amount of the loan for the year ($100). Because the amount of the loan exceeds the loan value of the real property, the interest income apportioned to the real property is

an amount equal to the interest income multiplied by a fraction the numerator of which is the loan value of the real property ($55) and the denominator of which is the amount of the loan ($100). Therefore, 55 percent of the interest income from *Y*'s loan is apportioned to the real property securing the loan. Interest income apportioned to the other property is the excess of the total interest income over the interest income apportioned to the real property. *See* § 1.856–5(c)(2).

(2) *Asset Test*. At the end of every calendar quarter during 2010, the current value of the real property securing the loan was $55, the value of the loan (as determined under § 1.856–3(a)) was $60, and the loan value of the real property securing the loan (as determined under § 1.856–5(c)(2)) was $55. For every calendar quarter during 2010, in determining the amount of the loan that is a real estate asset for purposes of the 75% Asset Test, *Y* may use the safe harbor in section 4.02 of this revenue procedure. If *Y* does so, the amount of the loan that is a real estate asset for purposes of 75% Asset Test is the lesser of—

- The value of the loan as determined under § 1.856–3(a) (see section 2.04 of this revenue procedure) ($60); or
- The greater of—
  - The current value of the real property securing the loan ($55); or
  - The loan value of the real property securing the loan as determined under § 1.856–5(c) and, if applicable, section 4.01 of this revenue procedure (in this case, section 4.01 is not applicable) ($55).

Accordingly, *X* may treat $55 of the loan as a qualifying asset.

.03 *Example 3*. On January 1, 2011, *Z*, a REIT, purchased for $60 a distressed mortgage loan with a principal amount due of $100. During the taxable year 2011, the amount of the loan under § 1.856–5(c)(2) was $100. The value of the real property securing the loan on the date *Z* committed to purchase the loan was $55 and the value of the personal property securing the loan was $5. At the end of the first calendar quarter in 2011, the current value of the real property securing the loan was $55, and the value of the loan (as determined under § 1.856–3(a)) was $60.

Asset Test. Under section 4.02 of this revenue procedure, *Z* may treat $55 of the loan as a "real estate asset" for purposes of the 75% Asset Test. This amount is the lesser of—

- The value of the loan as determined under § 1.856–3(a) (see section 2.04 of this revenue procedure) ($60); or
- The greater of—
  - The current value of the real property securing the loan ($55); or
  - The loan value of the real property securing the loan as determined under § 1.856–5(c) and, if applicable, section 4.01 of this revenue procedure (in this case, section 4.01 is not applicable) ($55).

At the end of the second calendar quarter of 2011, the current value of the real property securing the loan had increased to $65, and the value of the loan (as determined under § 1.856–3(a)) had increased to $70. Accordingly, at the end of the second quarter of 2011, under section 4.02 of this revenue procedure, *Z* may treat $65 of the loan as a "real estate asset" for purposes of the 75% Asset Test. This amount is the lesser of—

- The value of the loan as determined under § 1.856–3(a) (see section 2.04 of this revenue procedure) ($70); or
- The greater of—
  - The current value of the real property securing the loan ($65); or
  - The loan value of the real property securing the loan as determined under § 1.856–5(c) and, if applicable, section 4.01 of this revenue procedure (in this case, section 4.01 is not applicable) ($55).

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for all calendar quarters and all taxable years.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2011–16 is modified and superseded.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Jonathan D. Silver of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Mr. Silver at (202) 317-4413 (not a toll-free number).

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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