

Guidance for obtaining recapture relief – FEMA FL 4337-DR (Irma)

Internal Revenue Service (IRS) [Revenue Procedure 2007-54](#) (Rev. Proc. 2007-54) and IRS [Revenue Procedure 2014-49](#) (Rev. Proc. 2014-49) provide guidance to state agencies in the event the President declares a Major Disaster. Section 7 of Rev. Proc. 2007-54 and Section 8 of Rev. Proc. 2014-49 provide recapture relief under Internal Revenue Code Section 42 (Section 42) for buildings that are beyond the first year of the credit period, but still within the 15-year federal Compliance Period, when qualified basis is reduced by reason of a casualty loss as a result of a Major Disaster declared by the President provided that the qualified basis is restored by reconstruction or replacement within a reasonable restoration period. Section 4 of Rev. Proc. 2007-54 provides that a county so designated by the Federal Emergency Management Agency (FEMA) for Individual Assistance and/or Public Assistance is a major disaster area for purposes of Rev. Proc. 2007-54 Section 7. A casualty loss is defined by IRS Publication 547 as damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual.

On September 10, 2017, a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA-4337-DR) and related determinations was issued. Due to the effects of Hurricane Irma, all 67 counties in the State of Florida were designated as adversely affected by the major disaster and are authorized under the FEMA Public Assistance program.

The owner of a Housing Credit development in Florida Housing's portfolio who wishes to obtain recapture relief under Rev. Proc. 2014-49 will complete and execute the Notification of Overall Qualified Basis Loss portion of Florida Housing Form RR-03 – Recapture Relief Notifications (Form RR-03) and email to the monitoring agent for the development and to HDR@floridahousing.org.

Florida Housing form RR-04 – Recapture Relief Detail List (Form RR-04) will be completed regarding each BIN for which an owner wishes to obtain recapture relief. Completed Forms RR-04 will be emailed to the monitoring agent for the development and to HDR@floridahousing.org.

Obtaining recapture relief, by submission of Form RR-03 and Form RR-04, does not satisfy the requirement in Code of Federal Regulations (CFR) Section 1.42-5(c)(1) that an owner must on its required annual certification to Florida Housing report any change in applicable fraction and provide a description of the change. Such a reduction must still be reported on Annual Owner Certificate Form AOC-1.

When a development owner fails to comply with the rules of Section 42 because of a major disaster, and Florida Housing discovers the failure to, Florida Housing must report the noncompliance on Form 8823 and describe how the major disaster contributed to the noncompliance.

Florida Housing determined that the reasonable restoration period for qualified basis reduction as a result of October 31, 2019 is the ending date of the reasonable restoration period. Any failure to restore qualified basis within the restoration period shall result in submission to IRS of Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.