

HAWKINS ADVISORY

2012 HIGH HOUSING COST AREA CALCULATIONS WITH RESPECT TO MORTGAGE REVENUE BONDS

Please be advised that the Internal Revenue Service yesterday released Revenue Procedure 2012-16, which contains information for issuers of single-family housing bonds and mortgage credit certificates specifically with respect to high housing cost area calculations including a “hold harmless” provision.

Revenue Procedure 2012-16 provides for a median gross income figure for the United States of \$65,000 as released by HUD on December 1, 2011. Please note that in calculating 2012 income limits, Section 3 of Revenue Procedure 2012-16 allows an issuer to use either (i) the median gross income for the United States, the state and statistical areas within the state, as released by HUD on December 1, 2011 (collectively, the “FY 2012 Income Figures”) or (ii) the median gross income for the United States, the state and statistical areas within the state, as released by HUD on May 31, 2011 (collectively, the “FY 2011 Income Figures”). In addition, if the issuer uses the FY 2012 Income Figures to calculate high housing cost areas then the issuer must use FY 2012 numbers for all purposes within the high housing cost area formula. Likewise, if the issuer uses the FY 2011 Income Figures to calculate high housing cost areas then the issuer must use FY 2011 numbers for all purposes within the high housing cost area formula.

Revenue Procedure 2012-16 supersedes Revenue Procedure 2011-37, which is now obsolete except with respect to the use of the FY 2011 Income Figures as provided in Section 3 of the Revenue Procedure.

Attached is a copy of Revenue Procedure 2012-16. Please contact a member of the Tax Department or Housing Group if you have any questions about the use of this information.

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Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.601: Rules and Regulations.

(Also Part I, §§ 25, 103, 143; 1.25-4T, 1.103-1, 6a.103A-2.)

Rev. Proc. 2012-16

SECTION 1. PURPOSE

This revenue procedure provides guidance with respect to the United States and area median gross income figures that are to be used by issuers of qualified mortgage bonds, as defined in § 143(a) of the Internal Revenue Code, and issuers of mortgage credit certificates, as defined in § 25(c), in computing the housing cost/income ratio described in § 143(f)(5).

SECTION 2. BACKGROUND

.01 Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any state or local bond. Section 103(b)(1) provides that § 103(a) shall not apply to any private activity bond that is not a qualified bond (within the meaning of § 141). Section 141(e) provides that the

term "qualified bond" includes any private activity bond that (1) is a qualified mortgage bond, (2) meets the applicable volume cap requirements under § 146, and (3) meets the applicable requirements under § 147.

.02 Section 143(a)(1) provides that the term "qualified mortgage bond" means a bond that is issued as part of a "qualified mortgage issue". Section 143(a)(2)(A) provides that the term "qualified mortgage issue" means an issue of one or more bonds by a state or political subdivision thereof, but only if (i) all proceeds of the issue (exclusive of issuance costs and a reasonably required reserve) are to be used to finance owner-occupied residences; (ii) the issue meets the requirements of subsections (c), (d), (e), (f), (g), (h), (i), and (m)(7) of § 143; (iii) the issue does not meet the private business tests of paragraphs (1) and (2) of § 141(b); and (iv) with respect to amounts received more than 10 years after the date of issuance, repayments of \$250,000 or more of principal on financing provided by the issue are used not later than the close of the first semi-annual period beginning after the date the prepayment (or complete repayment) is received to redeem bonds that are part of the issue.

.03 Section 143(f) imposes eligibility requirements concerning the maximum income of mortgagors for whom financing

may be provided by qualified mortgage bonds. Section 25(c)(2)(A)(iii)(IV) provides that recipients of mortgage credit certificates must meet the income requirements of § 143(f). Generally, under §§ 143(f)(1) and 25(c)(2)(A)(iii)(IV), these income requirements are met only if all owner-financing under a qualified mortgage bond and all certified indebtedness amounts under a mortgage credit certificate program are provided to mortgagors whose family income is 115 percent or less of the applicable median family income. Under § 143(f)(6), the income limitation is reduced to 100 percent of the applicable median family income if there are fewer than three individuals in the family of the mortgagor.

.04 Section 143(f)(4) provides that the term "applicable median family income" means the greater of (A) the area median gross income for the area in which the residence is located, or (B) the statewide median gross income for the state in which the residence is located.

.05 Section 143(f)(5) provides for an upward adjustment of the income limitations in certain high housing cost areas. Under § 143(f)(5)(C), a high housing cost area is a statistical area for which the housing cost/income ratio is greater than 1.2. The housing cost/income ratio is determined under § 143(f)(5)(D) by dividing (a) the applicable housing price ratio by (b) the ratio

that the area median gross income bears to the median gross income for the United States. The applicable housing price ratio is the new housing price ratio (new housing average purchase price for the area divided by the new housing average purchase price for the United States) or the existing housing price ratio (existing housing average area purchase price divided by the existing housing average purchase price for the United States), whichever results in the housing cost/income ratio being closer to 1. This income adjustment applies only to bonds issued, and nonissued bond amounts elected, after December 31, 1988. See § 4005(h) of the Technical and Miscellaneous Revenue Act of 1988, 1988-3 C.B. 1, 311 (1988).

.06 The Department of Housing and Urban Development (HUD) has computed the median gross income for the United States, the states, and statistical areas within the states. The income information was released to the HUD regional offices on December 01, 2011, and may be obtained by calling the HUD reference service at 1-800-245-2691. The income information is also available at HUD's World Wide Web site, <http://www.huduser.org/portal/datasets/il.html>, which provides a menu from which you may select the year and type of data of interest. The Internal Revenue Service annually publishes the median gross income for the United States.

.07 The most recent nationwide average purchase prices and average area purchase price safe harbor limitations were published on April 11, 2011, in Rev. Proc. 2011-23, 2011-15 I.R.B. 626.

SECTION 3. APPLICATION

.01 When computing the income requirements of § 143(f), issuers of qualified mortgage bonds and mortgage credit certificates must use either (1) the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on May 31, 2011, or (2) the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on December 01, 2011.

.02 If an issuer uses the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on May 31, 2011, to compute the housing cost/income ratio under § 143(f)(5), the issuer must use the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on May 31, 2011, for all purposes under § 143(f). Likewise, if an issuer uses the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on December

01, 2011, to compute the housing cost/income ratio under § 143(f)(5), the issuer must use the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on December 01, 2011, for all purposes under § 143(f).

SECTION 4. EFFECT ON OTHER REVENUE PROCEDURES

.01 Rev. Proc. 2011-37, 2011-26 I.R.B. 931, is obsolete except as provided in §§ 3.01, 3.02, or 5.01 of this revenue procedure.

.02 This revenue procedure does not affect the effective date provisions of Rev. Rul. 86-124, 1986-2 C.B. 27. Those effective date provisions will remain operative at least until the Service publishes a new revenue ruling that conforms the approach to effective dates set forth in Rev. Rul. 86-124 to the general approach taken in this revenue procedure.

SECTION 5. EFFECTIVE DATES

.01 Issuers must use the United States and area median gross income figures specified in § 3.01 of this revenue procedure for commitments to provide financing that are made, or (if the purchase precedes the financing commitment) for residences that are purchased, in the period that begins on December 01, 2011, and ends on the date when these United States and area median gross income figures are rendered obsolete by a new revenue

procedure.

DRAFTING INFORMATION

The principal authors of this revenue procedure are David White and Timothy Jones of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Mr. White or Mr. Jones at (202) 622-3980 (not a toll-free call).