




U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

December 20, 2006

MEMORANDUM FOR: All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Operations Officers

FROM: 
Charles H. Williams, Deputy Assistant Secretary for Multifamily
Housing Programs, HT

SUBJECT: Additional Disaster Guidance for Properties Impacted by
Presidentially Declared Disasters Katrina and Rita

This memorandum supplements the guidance provided in Notices H 05-20 and 04-22, "Disaster Recovery Guidance by Multifamily Housing after a Presidentially-Declared Disaster."

Right of Return

All residents displaced from a HUD insured and/or assisted multifamily property as a result of a Presidentially-Declared-Disaster (PDD) have the right to return to the unit they occupied at the time of a PDD once the unit is repaired, restored or otherwise becomes available for re-occupancy. In addition, residents who occupied units at the time of a PDD that were destroyed, condemned or substantially damaged and the Section 8 Housing Assistance Payment (HAP) contract is transferred to a new property, those residents have the right to move to the new property. Those residents who received Section 8 rental assistance prior to the disaster, and who remain qualified, will receive Section 8 rental assistance at the new property.

Owners must inform all displaced residents in writing at least 60 days prior to the expected date that the unit will be ready for re-occupancy. The notice must be issued via regular and certified mail to the resident's last known address. Displaced residents must respond within 30 days of the notice and inform the owner of their intention to return or not, and provide contact information. The response must be in writing, although the resident may also call the owners contact representative to indicate their decision and to ask any questions they may have about returning. If the resident does

not respond within 30 days from the date of the notice, the owner must send a second notice notifying the resident that they no longer have a right of return to the unit that the resident occupied prior to the PDD. Those residents indicating an intention to return must be given a minimum of 60 days from the date the unit is ready for re-occupancy to re-occupy the unit. An owner has the option to give a displaced resident a longer period to return to the property.

An owner may offer an available comparable unit to a displaced resident(s) if the unit that the resident(s) occupied before the PDD cannot be repaired or if the needed repairs require a long period of time to complete. If a returning resident(s) accepts an alternate unit, the resident(s) is considered re-housed and not eligible for additional unit transfer except in accordance with HUD Handbook 4350.3 REV-1. If the displaced resident(s) resided in a Section 8 HAP unit and was over-or under-housed, as defined in the aforementioned handbook, prior to the PDD, an appropriate size must be offered as a replacement, if available.

If a displaced resident(s) fails to return after notifying the owner of their intention to return during the right to return period, and there was no agreement between the displaced resident(s) and the owner to extend the time period, the owner may take action to terminate the lease in accordance with local law and rent the unit. In this case the resident no longer has a right to return to their unit and will be treated as a new applicant and will have no priority as a PDD displaced resident on the waiting list. Disposal of any personal property must be done in accordance with local law. Additionally, owners may take action to terminate a lease and dispose of personal property in accordance with local law when a displaced resident(s) indicates their intention not to return or fails to respond to the owners notice.

Waiting List Preferences

Federal statute and HUD regulations require that PDD displaced residents be given priority over other applicants for either temporary or permanent housing in all multifamily properties currently insured under sections 221(d)(3), 221(d)(4) and 221(d)(3) BMIR and 236 programs (See HUD Handbook 4350.3 REV-1, chapter 4, paragraph 4-6). The term of this requirement is for 18 months from FEMA's publication of the PDD declaration, unless extended by Congress. The PDD displaced resident is required to provide their FEMA certification to qualify for priority on the waiting list and must also be eligible for the unit (cannot be over or under housed). An owner should maintain the same waiting list preferences that were in place prior to the PDD except for the preference priority for the 18-month period referenced above. This is a one-time preference per PDD.

When a displaced resident secures temporary housing using this preference rule and they decide to remain in the unit and not return to the unit which they occupied at the time of the disaster they are considered permanently housed. They lose their right to return to the unit they occupied at the time of the disaster when it is repaired, and they are no longer afforded any preference.

If the displaced resident wants to return after the 60-day time period to return has expired and there was no agreement between the displaced resident and the owner to extend the time period to return to the property, the resident no longer has a right to return to their unit and they are treated as a new applicant and will have no priority as a PDD displaced resident on the waiting list. A PDD

displaced resident that is offered permanent housing but decides to reject the permanent housing unit is no longer considered PDD displaced and will not be afforded preference in accordance with the preceding paragraph.

Resident Files and Recertification Requirements

If resident files are destroyed or unavailable as a result of a PDD, an owner/agent can use the TRACS certification database in Secure Systems as a source of information for HUD assisted residents. In such cases, TRACS can be used to establish or confirm who resided at the site and who received HUD rental assistance prior to the PDD.

In addition, if the waiting list information for assisted units was lost due to the PDD, the owner/agent must advertise the availability of assisted units in accordance with the Affirmative Fair Housing Marketing Plan, and create a new waiting list. The owner is responsible for documenting the loss of the pre-PDD waiting list and the need for “starting over”.

All returning residents, who are subject to income certification requirements, must be recertified as soon as possible upon their return to the property if their income or other eligibility criteria have changed, or if they are due for an annual recertification. The recertification process should be initiated no later than 15 business days after the displaced resident returns.

Section 8 Housing Assistance Payment Contract Opt-Outs

Opt-out requests for properties that have been condemned, destroyed or substantially damaged as a result of the PDD will be handled on a case-by-case basis. The procedures for opt-outs are outlined in Chapter 11 of the Section 8 Renewal Policy Guide. Please note that for projects that have been deemed uninhabitable by the Department and no residents are residing in the project, the notice requirement of section 8(c)(8) of the United States Housing Act of 1937 will be reduced from one-year to 120 days. The notice must be issued to each resident at the last known address via regular and certified mail (return-receipt requested). Additional guidance will be provided for securing, issuing and eligibility of tenant protection vouchers for the disaster-displaced residents of a multifamily housing property where the owner opts-out of the Section 8 HAP Contract.

Forbearance

Section 202/811 and Secretary-held mortgages: Hub Directors are authorized to approve foreclosure forbearance agreements in PDD areas in maximum increments of 90 days for properties that meet the following minimum requirements:

- The Hub Director determines that it is likely that forbearance will result in restoration of the project to full operation and the mortgage brought current;
- The property has unfunded repair needs; and
- The owner is actively negotiating for or awaiting an insurance claim payment, or the owner is actively negotiating or awaiting grant funds release.

- The owner otherwise is in full compliance with all business agreements with HUD.

The owner is required to execute a Forbearance Agreement that will include the terms of the forbearance and will require the owner to submit a monthly accounting report and progress report of negotiations and repairs. HUD Handbook 4350.1, REV-1 provides a sample workout agreement

that can be used for these projects. A copy of the forbearance agreement must be sent to the Multifamily Notes Branch for HUD-Held properties and the CFO's office in Ft. Worth on the Section 202 and 811 projects as well as a copy to the Asset Management Division in Headquarters.

Insured mortgages: If the lender requests forbearance, a 90-day extension of election to assign may be approved under the same circumstances as above except that the mortgagee will provide the information above to the Hub Director for approval. All extensions must be requested through the Multifamily Delinquency and Default Reporting System (MDDR).

When funds are secured to repair the property, the Hub Director may approve a final written forbearance agreement and/or extension to assign if the following conditions are met:

1. The Hub Director has determined that the funds are sufficient to fully restore and preserve the property and to pay in full, all delinquencies and arrearages in the mortgage accounts;
2. The owner has a Hub approved, time-phased repair plan with a targeted end date, and is in full compliance with the plan and its other business agreements; and,
3. The owner submits monthly accounting reports and monthly progress reports as required by the Hub.

If there is a serious default of the repair plan or failure to supply cash required to cure the delinquencies, the Hub will follow normal disposition and enforcement policy and practices.

Where it is determined there is no possibility of preserving the property, no forbearance or extensions of elections to assign should be approved. The Department's normal disposition policies and procedures will apply.

Mortgage Prepayment

Mortgagors who wish to prepay their FHA insured or HUD Held mortgage are subject to any existing lockout provisions, applicable use restrictions, resident notification and HUD review/ approval requirements. No exceptions are authorized for properties located in the PDD areas.

For Section 221 and 236 properties that are preservation-eligible and the owner has a right to prepay without HUD approval, the owner must provide the statutory Resident Notification letter no less than 150 days and no more than 270 days before the intended prepayment date. Owners of properties in the PDD area shall post notice at the property as well as send the statutory required Resident Notification letter to each tenant residing at the property on the date of the disaster, via regular and certified mail to the resident's last known address. The owner must retain copies of all notification letters and certified receipts in the resident files. If the owner does not provide the

appropriate resident notification, that owner must execute a use agreement.

For 221 and 236 properties where HUD approval is required to prepay and the project is subject to 250(a) of the National Housing Act (Notice 2004-17), the Department will continue to require owners to send the Resident Notification letter via regular and certified mail to each resident residing at the property on the date of the disaster, via regular and certified mail to the resident's last known address. The owner must retain copies of all notification letters and certified receipts in the resident files. However, the Department will consider an exception request to lessen the notice period for these projects. Exception requests should be forwarded to the Asset Management Division in Headquarters for review. A Rental Use Agreement must also be executed and recorded at the time of prepayment.

