



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

July 20, 2007

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

/s/
FROM: John L. Garvin, Senior Advisor to FHA Commissioner/Acting
Deputy Assistant Secretary for Multifamily Housing Programs, HT

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

This supercedes and revises the policy information provided in the Office of Multifamily Housing Programs' memorandum dated December 20, 2006, regarding the referenced subject. This information supplements the guidance provided in Notices H 05-20 and 04-22, "Disaster Recovery Guidance by Multifamily Housing after a Presidentially-Declared Disaster", and memorandum dated October 28, 2005, with the subject "Multifamily Disaster Clarification of Notice H 04-22 and Additional Guidance". All of this disaster related policy and program guidance information will be consolidated in a new notice in the future.

This information should be disseminated to appropriate staff, owners, management agents, mortgagees, contract administrators, and other program participants.

Opportunity to Return

All households displaced from a HUD insured and/or assisted multifamily property as a result of a Presidential Declared Disaster (PDD) must be provided the opportunity 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 are destroyed, condemned or substantially damaged and the Section 8 Housing Assistance Payment (HAP) contract is transferred to a new property must be afforded the opportunity to move to the new property.

Due to the severe impact of Hurricanes Katrina and Rita on the Gulf area, some displaced residents have moved from the immediate area, and it may be difficult to locate them. Owners and management companies must use their best efforts in locating displaced residents.

Those who occupied assisted housing units may have a temporary Katrina Disaster Housing Assistance Program (KDHAP)¹ voucher, and can be located through a HUD database. Owners should contact the local HUD field office and request assistance in obtaining available contact information on displaced residents who received project-based rental assistance. Displaced residents should maintain contact with the owner/agent and provide up to date contact information.

Owners must inform all displaced households in writing at least 90 days prior to the expected date the unit will be ready for re-occupancy. A sample notice is provided as an attachment to this memorandum.

The notice must be sent via regular and certified mail to the head of the households' last known address. Displaced residents must respond within 45 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 owner's contact representative to indicate their decision and to ask any questions they may have about returning. If the resident does not respond within the stipulated number of days from the date of the notice, the owner must send a second notice notifying the resident that they have forfeited the opportunity to return to the unit that they occupied prior to the PDD.

Those residents indicating an intention to return must be given a minimum of 60 days to reoccupy the unit, from the date the unit is repaired. 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 if the unit that the resident occupied before the PDD cannot be repaired or if the needed repairs require a long period of time to complete. If a returning resident accepts an alternate unit, the resident 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 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. However, the owner will not be expected to accommodate an extended family. Extended family for this purpose will include (or exclude) nonrelatives or adults who were not pre-disaster residents or members of the household. In addition, if a household increased to the extent that they are now larger than the receiving unit can accommodate or there are no large units available in the property, the owner should still accommodate the household as long as it does not create a health and safety problem.

¹ The Katrina Disaster Housing Assistance Program was replaced with the Disaster Voucher Program (DVP). The DVP has been established to cover all Presidential Declared Disasters that may occur in the future.

If a displaced resident fails to return after notifying the owner of their intention to return during the opportunity to return period, and there was no agreement between the displaced resident 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. 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 indicates their intention not to return or fails to respond to the owner's 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 22(d)(3) BMIR and 236 programs (See HUD Handbook 4350.3 REV-1, chapter 4, paragraph 4-6). The term of this requirement is 18 months from FEMA's publication of the PDD declaration, unless extended by Congress. The PDD displaced resident is required to provide their FEMA eligibility letter, or other acceptable documentation, to qualify for priority preference on the waiting list.

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 opportunity to return to the unit they occupied at the time of the disaster.

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, the resident will be deemed to have forfeited the opportunity to return. However, an owner may decide, based on the particular circumstances, to grant them waiting list preference.

The Department wishes to emphasize that the opportunity to return for families who are displaced from multifamily HUD-insured and/or assisted properties are not governed by the 18-month time limit. It is the Department's priority to afford families who are displaced from these units afforded the opportunity to return when their units are repaired irrespective of how long it takes. However, if the displaced family has leased permanent housing elsewhere, that family loses their preference or opportunity to return.

Displaced residents of HUD multifamily insured and/or assisted housing who, fail, for whatever reason, to return to the property within the stipulated timeframe can be granted a preference on the waiting list if they subsequently decide to return. Policy allows owners to grant such a preference unless the displaced resident has chosen permanent housing elsewhere.

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 is 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 to create a new list. Waiting list applicants, who can provide acceptable documentation that they were on the destroyed waiting list, must be recognized and be given preference on the new list.

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 is to be initiated no later than 15 business days after the displaced resident returns. Recertification must be completed in accordance with HUD handbook 4350,3.

Preservation of Damaged Housing and Preservation of Section 8 Housing:

Damaged or destroyed HUD insured and/or assisted rental housing is to be repaired or replaced as quickly as possible to the greatest extent possible to help meet the housing needs of communities impacted by a PDD.

The preservation of damaged affordable housing units is especially important. Multifamily staff will work closely with owners to expedite the restoration or replacement, as appropriate, of the affected units. HUD offers flexibility in using Section 8 assistance to provide temporary housing to Section 8 residents displaced from their units by a PDD. HUD also has the authority to allow the transfer of the HAP contract to another eligible property site when HUD determines that the damaged property cannot be repaired or replaced and provided certain conditions are met. As a last resort, and only after all options to preserve the Section 8 HAP assistance have been explored, HUD may terminate the HAP contract when it determines that the damaged or destroyed units cannot be repaired or replaced or that it is not practical to do so. In this event, HUD will provide the owner the notification requirements to inform displaced residents that the housing will not be repaired/replaced and guidance on securing Housing Choice Vouchers for eligible residents.

Forbearance

Section 202/811 and Secretary-held mortgages: Hub Directors are authorized to approve 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 on obtaining needed funding and repair status. 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 to the CFO's office in Ft. Worth for the Section 202 and 811 properties, 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.

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 of 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.

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 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.

If you have any questions or need additional information, please contact the Director for Business Relationships and Special Initiatives Division in the Office of Asset Management, at (202) 708-3944.

Attachment:

Sample notification letters to displaced residents

Sample letter to notify disaster displaced residents that their unit will be repaired and available for re-occupancy.

Owner/Management Company/or Property Letterhead

Date

Mr./Mrs. _____

Address _____

Dear _____:

This letter contains important information regarding your opportunity to return to your former rent assisted apartment. Please read carefully, and return the attached form noting your intention to return.

Our records indicate that you were displaced from _____ property, due to the damage caused by hurricane Katrina (or other PDD). **I want to let you know that unit number _____, at _____ property will be repaired and ready for re-occupancy in about 60 (insert 90 if appropriate) days from the date of this letter.** You have the opportunity to reoccupy this Section 8 (or insert other rental assistance program) unit. **To take advantage of this opportunity to return you must sign and return the attached form indicating your intention. Please note that you must reoccupy the apartment no later than 60 days after _____, which is the date the unit will be ready.**

It is very important that you understand that if you fail to respond to this notice, or fail to reoccupy the unit within 60 days after it is repaired, or indicate that you do not intend to return that you will lose the opportunity to return to this unit. The apartment will be rented to someone else, and any personal property remaining in the unit that you have not removed, will be disposed of in accordance with state and local laws.

Please complete the attached form, and return it within 30 (insert 45, if 90 days are provided above) days. If you have any questions please contact _____, at _____.

Sincerely yours,

Name

Enclosure
