

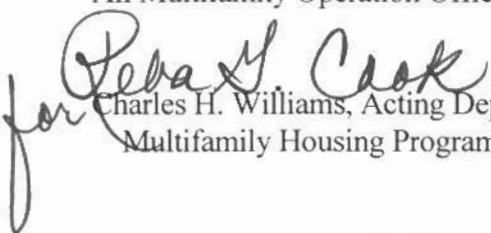


U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

OCT 28 2005

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

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

SUBJECT: Multifamily Disaster Clarification of Notice H 04-22 and  
Additional Guidance

This is a re-issuance of the September 9, 2005, memorandum with the subject "Multifamily Disaster Clarification of Notice H 04-22 and Additional Guidance." This memorandum includes the relevant provisions of the September 9<sup>th</sup> memorandum as well as clarification of additional issues. Therefore, this memorandum supersedes the September 9<sup>th</sup> memorandum in its entirety. Added or revised information is in *italics*.

This memorandum provides field offices and *HUD program participants* with HUD's response to questions related to "Presidentially-Declared Disasters" (*PDD*). This guidance is based on the general guidance as set out in Notice H 04-22, "Disaster Recovery Guidance by Multifamily Housing after a Presidentialy-Declared Disaster."

**ASSET  
MANAGEMENT ISSUES:**

***Determining Eligibility of Applicants:***

The Notice states that "The Department will rely upon FEMA eligibility determination." However, due to the magnitude of the recent disasters, disaster-displaced residents have experienced delays in obtaining FEMA registration numbers and eligibility determinations. Therefore, owners should use their best judgment in processing requests for temporary housing from disaster-displaced residents.

*Until further notice from Headquarters, in lieu of the FEMA certification, owners should require documentary identification that the applicant lived in the disaster-declared county at the*

*time of the disaster.* The disaster county listing is available on the FEMA Website at <http://www.fema.gov/news/disasters.fema>. The documentation should include one or more of the following:

- A drivers license or other picture ID with an address;
- Utility bills;
- In lieu of the above, tenants may have received an application number from FEMA, but have not yet received a letter of eligibility from FEMA; or
- A credit report on the displaced person can be used to document that the address of the applicant was in the area of the PDD.

Owners should amend their leases to state that the displaced person is certifying that they are eligible for assistance according to Notice H 04-22. If the disaster-displaced resident is later found *to be ineligible, they may be evicted.*

### ***Providing Temporary Housing to Disaster-Displaced Residents***

*Owners are to be encouraged to rent vacant units to disaster-displaced residents for temporary housing. A 30-day renewable lease is recommended. Please note that owners are not required to withhold vacant units off the market for disaster-displaced residents. The following guidance applies to temporary housing only:*

- *A disaster-displaced resident **MUST pay market rent** for a unit being leased as temporary housing. Income certifications need not be performed even if the disaster-displaced resident is to occupy a unit in property offering rental subsidy assistance, since they will pay market rent and the owner will not receive any rental subsidy assistance from HUD. If, however, a disaster-displaced resident is to be provided permanent housing in a unit receiving project-based rental subsidy assistance, any FEMA and other disaster related assistance will be excluded from income unless the funds are deposited in an account or investment. In such cases, the funds are treated as an asset and any income on the asset is considered in determining income and the tenant's portion of the rent.*
- *For Sections 221(d)(3), 221(d)(4), and 236 properties, disaster-displaced residents **MUST** be given priority over any other applicants, and moved to the top of any waiting list for temporary or permanent housing. This is a statutory requirement.*
- *For all other multifamily properties secured by HUD-insured or HUD-held mortgages with no Section 8 assistance, disaster-displaced residents **MAY** be given priority over other applicants for temporary or permanent rental housing.*
- *For any 202/811 project that does not have a waiting list, and there is no immediate market for elderly or disabled families, whichever is applicable, vacant units may be made available for temporary housing as long as the disaster-displaced residents applicant meets all program eligibility requirements. Deviation from program*

*eligibility rules requires a Headquarters waiver. Such waivers will be considered on a case-by-case basis.*

- *For 202 loans and 202/811 capital advance projects, disaster-displaced residents may be given preference over individuals/families on the waiting list so long as the applicant meets all eligibility requirements (age, etc.). For units designated for the disabled in 811 projects, owners may consider temporary disability caused by the disaster in determining eligibility for temporary rental housing. *Waiting list preference may not be afforded to disaster-displaced residents seeking permanent housing in 202/811 properties.**
- *For a property with Section 8 assistance, vacant units can be made available to disaster-displaced residents for temporary housing. The disaster-displaced resident would pay market rent for the unit. These units are excluded from the Section 8-subsidy monthly invoice, since the owner is receiving market rent on the unit. If the disaster-displaced resident requests permanent housing in a Section 8 eligible unit, they can be placed at the top of the waiting list. For permanent housing placement, and to receive the benefit of the Section 8 subsidy, the disaster-displaced resident must meet all program requirements, including income.*
- *Owners should establish a written policy for leasing housing to disaster-displaced residents.*

### ***Security Deposits for Temporary Housing***

Owners renting to disaster-displaced residents for temporary housing are encouraged to be flexible in negotiating temporary leases. Should an owner require a security deposit, state and local law prevails. HUD will allow owners to waive the normal security deposit requirements for disaster-displaced residents who are financially distressed, or collect a reduced deposit amount, or create a payment plan to collect the deposit over time. Permanent housing placement requires the payment of the normal security deposit.

### ***Application Fees for Temporary Housing***

As with the guidance for security deposits, owners are encouraged to waive application fees at market rate housing properties for those disaster-displaced residents who are financially distressed. Owners may consider reduced fees or a payment plan for disaster-displaced residents seeking temporary housing.

### ***Criminal Background Checks***

Owners of assisted properties are required by both statute and regulation to exclude persons who have engaged in specific crimes. Therefore, criminal background checks and sex offender registration checks should be completed on disaster-displaced applicants for temporary housing, or those requesting to "double up" with a friend, or relative, who is a current resident.

*Sex Offender registration checks are required pursuant to Section 578 of QHWRA and 24 C.F.R. §5.905, an owner of federally assisted housing must prohibit admission for any household that includes any individual who is subject to a lifetime registration requirement under a State sex offender registration program. Market rate properties should be guided by their existing policy in processing new applicants.*

### ***Right of Return – Tracking Disaster Displaced Residents***

- *Disaster-displaced residents have the right to return to the unit they were displaced from by the disaster; however, the right is not in perpetuity. Once a disaster-displaced resident signs a permanent lease, at an alternative location, they are no longer displaced, and therefore, no longer eligible to return. The owner of the unit from which they were displaced has no further obligation and may rent the unit according to program requirements. However, if they have to dispose of a tenant's personal property, they must do so in accordance with local landlord/tenant law.*
- *We encourage owners to be flexible if a disaster-displaced resident expresses a desire to return even if they permanently leased a replacement residence. If feasible for the owner and the disaster-displaced resident, we encourage owners to allow them to return. However, in such cases ex-tenants may not jump the waiting list at their previous residence.*
- *Once a disaster-displaced resident has chosen permanent housing, they are expected to immediately inform their former landlord and give notice of termination as specified in their lease. The disaster-displaced resident has the responsibility to move all their personal belongings from their former residence. Naturally, they may need some additional time because of disaster related issues such as acquiring moving vans, etc. Owners should be guided by the lease provisions and local law relative to evictions and the disposition of personal property of disaster-displaced residents who do not or cannot return.*
- *Once permanently housed, FEMA will likely rule that the disaster-displaced resident is no longer eligible for FEMA rental assistance. However, the disaster-displaced resident may still be eligible for other forms of FEMA assistance.*
- *When disaster-displaced residents have been dispersed to mass shelters, hotels, and other temporary housing, owners should make a diligent effort to locate their disaster-displaced residents as soon as possible, and encourage them to keep them informed on their whereabouts, so they can be informed when their former unit is ready for re-occupancy.*

### ***REAC Inspections and Management and Occupancy Review (MOR)***

*There are certain counties in the PDD areas where REAC Physical Inspections and Management & Occupancy Reviews have been postponed until further notice. As the restricted counties change from time to time, Hub Directors and REAC will be informed under separate cover of any changes. However, an owner may request a REAC inspection through their local HUD Office. The HUD Project Manager should then make the request to Headquarters through the REAC Inspection Mailbox.*

### **Annual Financial Statement Submission**

*Owners of multifamily properties affected by a PDD, who are required to file their annual financial statement (AFS) may request an extension of up to 30-days to file. This extension applies to currently due financial statements only. The request for extension must be submitted to REAC electronically via the Multifamily Financial Assessment Subsystem (MF-FASS). Owners making such a request should provide their FEMA application number as well as a brief statement explaining why the extension is necessary. The extension may be extended further if necessary, based on the particulars of the case, and upon another request through REAC/FASS. If the owner should have made the request, but did not, they should now request the extension and provide a detailed explanation as to why such an extension is necessary.*

### **Secretary-Held Mortgage Servicing**

Owners of properties in PDD areas are encouraged to operate normally and pay all expenses if income is stable. However, in the case of a Secretary-held mortgage, HUD is willing to forbear delinquent mortgages for 90 days. Owners should devote all available income to restoring their property, paying expenses such as utilities, security, trash removal, etc. HUD is interested in the timely restoration of units, so disaster-displaced residents can return as soon as possible. HUD is willing to work with owners on a case-by-case basis if additional relief is needed.

### ***Mortgagee Forbearance***

*Bond trustees serve in the capacity of holding mortgagees and in FHA transactions are subject to standard HUD regulations and procedures concerning mortgage insurance claims and disposition of property insurance proceeds. This should be highlighted as a HUD forbearance initiative, because trustees are also bound by indenture provisions, which protect the interests of bondholders in receiving expeditious payment of FHA insurance proceeds. Trustees should be encouraged to obtain the consent of bondholders to the extent they feel constrained by trust indenture requirements for speedy claim settlement.*

### ***Mortgage Payments Paid by “Offset”***

*Owners of Section 202 properties in a disaster area that have automatic mortgage payment by the Section 8 offset and are in need of money for emergency repairs, to provide security or other disaster related purposes, etc., may request that the “offset” be temporarily suspended. A request for suspension of the offset should be made through the local HUD Office. The local HUD office will forward the request to the appropriate Hub Director, who will in turn forward it with a recommendation to Headquarters. Requests will be handled on a case-by-case basis.*

### ***McKinney Act Shared Savings Bond Refunding***

*In the case of bond refundings for FHA 20-year HAP assisted projects, all of the issuer savings have been fully paid as the HAP's have expired. These were contracts affected during the peak interest rates of 1980–1983. Many PHA issuers have unspent balances and several have not yet used any of their savings. This resource could help disaster victims by funding rental or home purchase or relocation assistance, provided that incomes are at or below 50% of median. Since HAP portability is not a problem, these HAP's having expired, state and local agencies around the nation could transfer their savings to disaster-impacted areas. In addition to the pool of unutilized savings, Agencies, which committed savings to other purposes, have discretion to re-direct to disaster relief without HUD prior approval. Agencies may of course use their savings to help victims relocated to their jurisdictions. The only restrictions are the statutory VERY low-income limit and requirement that housing be decent, safe and sanitary.*

### ***Role of Service Coordinators in the Disaster Relief Efforts***

*Service coordinators play a critical role in assisting the elderly, people with disabilities, and others who reside in subsidized multifamily housing developments. Therefore, they should continue to focus their attention on providing assistance to the residents. However, if there are disaster-displaced residents in the vicinity of the property, the service coordinator may provide assistance to them, at the property site. Reasonable accommodations can be made for those individuals unable to travel to the site.*

## ***DEVELOPMENT ISSUES***

### ***FHA Mortgage Insurance Disaster Guidance***

*The purpose of these instructions is to provide flexibility to Hub Directors in the PDD in dealing with various production issues. Hub Directors may delegate the authority in this guidance to Operations Officers and Program Center Directors located throughout the Hub jurisdiction. Hubs should e-mail the appropriate Headquarters staff for additional guidance or clarification.*

*These instructions apply to all project mortgages with insured advances under the applicable Sections of the National Housing Act, except Section 242 hospitals.*



### ***Projects under construction***

*HUD's overriding goal is to enable projects to reach 100% completion so they can be occupied as soon as possible. To the extent possible, Hubs should expedite review of insured advances, change orders, and cost certifications in order to reach final endorsement of the project mortgages as soon as possible.*

- *Inspections: Hub processing decisions on individual projects should be based on inspections by HUD staff/contractors (FHA approved mortgagee/MAP Lenders, if HUD staff/contractors are not available).*
- *Early release of general contractor's holdback: Hub Directors are authorized to allow early release of the general contractor's holdback where they believe it is necessary to meet the goal of 100% completion.*
- *Change orders: The Hub office should attempt to handle construction changes by processing change orders to expedite the review. Resubmission of revised plans and specifications should only be required where damage is so extensive that the change order process is not feasible.*
- *Approval of surety: Mortgagees must provide evidence of approval of surety on all required items such as change orders 10% above construction contract cost.*
- *Mortgage increases: Hub Directors are authorized to consider mortgage increases caused by disaster related factors in accordance with paragraph 1-30 B1.c. of Handbook 4435.1 and the Map guide. Reasonable consideration should be given to an increase in the mortgage to cover part of the cost. The granting of such an increase should be done with the proviso that the mortgagor pursue his/her remedy against the property insurance company or other sources and apply any recovery to mandatory payment to the mortgage of any funds recovered. Interim mortgage increases to be advanced and insured prior to final endorsement can be approved if the Hub Director believes it is necessary to reach the goal of reaching 100% completion.*
- *Cost Certifications: Hubs must use the expedited procedures contained in Notice 96-37 and the MAP guide in their review.*

### ***Projects completed and cost certified***

- *Projects requesting a mortgage increase because of additional work or increased costs caused by the disaster: The Hub offices should request a supplemental cost certification reflecting the additional work and corresponding soft costs, including any change orders for extensions of time. Final closing documents must be amended to reflect that any insurance proceeds received for mortgage increase items will result in a mandatory prepayment (to the mortgage principle balance).*

- *Projects with additional repair work, but not requesting a mortgage increase (anticipating payment from insurance proceeds, or government grants or other assistance, etc.): The Hub offices should expedite final endorsement of these cases, since the release of the holdback and final endorsement will enable the general contractor to obtain the remainder of this holdback and limit any permanent financing extension fees payable by the mortgagor.*

***Applications in the Pre-Construction Pipeline - Hub Directors have the discretion to waive MAP time deadlines without receiving HQ authorization.***

- *MAP Pre-application or SAMA/Feasibility Application received: Hub Directors have the discretion to return MAP pre-applications and SAMA/Feasibility applications or suspend review/processing so that mortgagees/borrowers can update the Phase I environmental, market, and rent and cost information. Hubs should be flexible in allowing sufficient time to amend MAP pre-applications or SAMA/Feasibility applications and should honor any requests to refund SAMA/Feasibility application fees paid to FHA. Where sponsors/mortgagees intend to resubmit another SAMA/Feasibility application, Hubs can credit the application fee to the new application instead of a refund.*
- *MAP Invitation Letter or SAMA/Feasibility Letter Issued: Hub Directors have the discretion to rescind MAP Invitation Letters and SAMA/Feasibility Letters or suspend further processing until mortgagees/borrowers can update the Phase I environmental, market, and rent and cost information. Hubs should be flexible in allowing sufficient time for updating and honor any requests to refund SAMA/Feasibility fees paid to FHA. Where sponsors/mortgagees intend to resubmit SAMA/Feasibility applications, Hubs can credit the application fee to the revised application instead of issuing a refund.*
- *HUD issuance of amended or revised SAMA/Feasibility/MAP Invitation Letter: Hubs will have to complete a revised environmental assessment, consult with the Economic Market Analysis Staff (EMAS) on market conditions and be convinced of continued demand for long-term occupancy before issuing a revised or amended approval letter.*

***Firm Commitment Application Received***

*Hub Directors have the discretion to return applications or suspend processing so that mortgagees can update the Phase I environmental, market, and rent and cost information to reflect current conditions in the area. Revised MAP underwriting summaries must specifically address the changes in the underwriting and the area. Hubs should be flexible in allowing sufficient time to update the applications, considering the extra time necessary for updating of the 3rd party MAP reports. Hubs will honor any mortgagee requests to refund application fees paid to FHA or credit the fees to a revised application.*



### ***Firm Commitment Issued /No Initial Endorsement***

*Hub Directors have the discretion to request mortgagees to withdraw applications or suspend processing so that mortgagees can update the Phase I Environmental, market, and rent and cost/repair information to reflect current conditions in the area. If the mortgagee refuses a Hub request to withdraw an outstanding firm commitment or update information, the Hub should not proceed to initial endorsement or honor any extension request until the Hub has received advice from Headquarters. FHA will refund Firm commitment application fees at the request of the mortgagee.*

### ***HUD Issuance of Firm Commitments***

*Hubs will have to complete a revised environmental assessment, consult with EMAS on market conditions and be convinced of the validity of the costs, rent and expense estimates, and the demand for long-term occupancy before issuing a new, amended, or reissued commitment.*

*When reissuing a Firm Commitment, the Hubs must consider and include an Initial Operating Deficit (IOD) and where necessary, allow for an extended IOD period to a projection of occupancy stabilization for the project.*

### ***DAP***

*Hub Directors have the discretion not to require disaster cases to be processed in DAP if they feel it will expedite review/processing. Staff must continue to enter all tracking information in DAP.*

### ***OTHER ISSUES/GUIDANCE***

*This guidance should be disseminated to all affected HUD staff. If there are questions or concerns they should be directed to the respective Headquarters office.*

*Nothing in this guidance exonerates program participants from any non-disaster related responsibilities or requirements.*