

U.S. Department of Housing and Urban Development

Housing

Special Attention of:
All Regional Directors
All Multifamily Hub Directors
All Program Center Directors
All Owners and Management Agents of
Multifamily Insured Properties
All Contract Administrators

NOTICE 04-22

Issued: November 10, 2004

Expires: November 30, 2005

Subject: Disaster Recovery Guidance by Multifamily Housing After a Presidentially-Declared Disaster

This Notice is intended to provide background and up-to-date guidance on HUD's policy and procedure regarding disaster recovery efforts by Multifamily Housing after a Presidentially-declared disaster. This Notice supersedes Notice 2004-18 and all prior directives on this subject. Until rescinded or amended this will be Multifamily Housing's procedures for disaster recovery.

Background:

This Notice is being issued to provide guidance to HUD Field Offices, owners, agents and residents. Everyone is encouraged to be sensitive to the problems and needs of those who were seriously impacted by Presidentially-declared disasters.

When the President declares a disaster, HUD participants must check with the Federal Emergency Management Agency (FEMA) to learn which counties have been designated for disaster recovery and the corresponding declaration dates. This information can be found on the Internet at <http://www.fema.gov/disasters> or by calling the local FEMA office.

The procedures described in this Notice are in effect for all Presidentially-declared disasters and will remain in effect for the duration of the emergency. Any county added to a declaration will also be eligible for disaster relief and, in such event, the provisions established in this Notice will apply.

The Department will rely upon FEMA eligibility determination. Those impacted by the disaster must make an application with FEMA, receive an application number, and obtain a letter of eligibility from FEMA, which specifically describes the type of eligibility. To obtain temporary rental housing, an applicant must have the FEMA letter, which will specify the applicant as displaced from their housing and as eligible for housing assistance.

FEMA continues to certify eligibility from time to time. Owners and residents are advised to check with the local FEMA office for ongoing guidance.

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Owners and residents are strongly encouraged to make an application to FEMA. Owners, residents and displaced residents will not be afforded relief under this Housing Notice unless they have been certified by FEMA as eligible.

Waivers of Handbooks, Notices, etc.:

Hub Directors should process requests for waivers of provisions in the Office of Housing Handbooks and Notices that do not reflect statutory or regulatory requirements, as quickly as possible. Hub Directors should prepare a Finding and Determination, which justifies each waiver request, and forward them to Headquarters for review and approval by the Director of Multifamily Housing Asset Management. Upon approval by Headquarters, please maintain a copy of the justification in the project file. The Real Estate Management System (REMS - Problem Statement Screen) must be updated when a request for a waiver is granted.

The Hub will develop and forward to Headquarters a policy for release of project funds, inspection repairs and rehabilitation as well as the approval of repair invoices. Upon review and approval by Headquarters, the policy is to be implemented by the Hub for duration of the emergency.

Priority for Permanent Rental Housing:

Displaced residents may be moved to the top of the waiting list in Section 221(d) and 236 projects for permanent rental housing as long as the residents are FEMA certified as disaster victims.

Multiple Occupants in a Unit:

The Department will allow multiple occupants in a unit provided it does not create a health and safety problem. FEMA-certified displaced residents can move in with families and friends occupying HUD-assisted units on a temporary basis, provided that the host household obtains the project owner's approval.

In the case of a Section 8-assisted unit, if a current, eligible family chooses to allow a non-eligible FEMA-certified individual/family to move into the unit on a short-term basis, the non-eligible family is considered a guest of the eligible Section 8 family. A multifamily project owner may allow the eligible family to house the guest(s) for a limited period (e.g., 90 days) without interruption of the subsidy. Residence by the eligible family is the predicate for continuation of the Section 8 subsidy.

Leases and Rents:

Owners with persons to be housed under these temporary housing measures should have the applicant execute a 30-day renewable lease. Subject to state or local law, the lease should have a provision which states that the lease terminates when the resident's permanent housing unit becomes available or when FEMA no longer certifies a

resident's FEMA eligibility. Rents for these temporary housing units must be set at the rents that were in effect immediately prior to the Presidential declaration. In the event the rents are more than the FEMA-approved rental assistance, the resident is responsible for paying the difference.

Use of Community Space:

Owners are encouraged to allow community space, kitchens, restrooms and other facilities to be used for shelters or disaster recovery-related activities.

Other Regulatory/Policy Relief:

REAC Inspections – The Department's practice is to postpone all physical inspections of projects for a minimum of 30 days from the date of the federally-declared disaster throughout the designated counties. The Department will conduct an evaluation from time to time to determine when, and for what counties, physical inspections will resume. When inspections are resumed, information will be posted on the REAC web site.

MF-FASS - Owners of multifamily properties located in the declared area that sustained damage, and who are required to file an annual financial statement (AFS), may request an extension of up to 30 days to file their AFS. This extension request must be submitted electronically to REAC via the Multifamily Financial Assessment Subsystem.

Occupancy Requirements – Program occupancy requirements do not apply for tenants who are afforded temporary housing.

Vacant Units – Owners are encouraged to hold vacant units off the market in anticipation of providing temporary housing to FEMA-certified displaced residents. However, please note that for Section 202/811 projects, vacant units can only be provided for temporary housing for FEMA-certified displaced residents, if there is no waiting list.

Evictions of Current Residents – Owners are encouraged not to evict residents who have not returned to their units in the impacted areas after the units have been repaired, if the resident has a reasonable basis for not returning (health, loss of income, loss of personal property like furniture, etc.). Owners may hold the vacant units off the market for a reasonable time as long as the rent is current. If the resident is delinquent on rent payments, the owner is encouraged to make a judgment based on the facts and circumstances of each case. Owners must stay in contact with displaced residents and keep them informed as to the date they can return to their units. However, if a displaced resident moves from a shelter or from temporary housing to other permanent housing, the owner is free to rent the unit.

Use of Escrows – The Department will approve use of reserves for replacements/residual receipts to make necessary repairs pursuant to outstanding Departmental policies and Handbooks. Mortgagees have been encouraged to provide

priority processing for these requests. Once the request for funds (Form HUD-9250) is received, the approval will be expedited. Headquarters will use United Parcel Service for overnight mailing. The field office must provide a specific address (not a post office box) to ensure the release of funds can be expedited. Also, the request for funds must be identified as “disaster relief.”

Insure Loans Mortgagee Servicing – HUD has instructed mortgagees to allow maximum flexibility for owners with delinquent project loans in the impacted areas. HUD encourages owners to quickly repair their properties to reduce resident displacement and to permit the return of displaced residents.

HUD-Held and 202 Mortgage Servicing – The Department will allow mortgagors to defer their payments, if they are using project funds to repair the property while waiting for insurance benefits or disaster financial assistance. HUD will approve a temporary forbearance plan under these circumstances.

Resident Occupancy/Eviction – Owners are encouraged to allow residents who have been displaced from their unit to have a right of first refusal for a reasonable time after their unit is repaired and ready for re-occupancy. Owners must inform residents in writing when their unit is habitable and can be re-occupied. Residents should be given a reasonable time frame to return to their unit. Owners are encouraged not to evict residents who have returned to their unit and who have reduced income due to a job loss as a result of the declared disaster. Payment plans for delinquent rents are encouraged. However, if a former resident moves to other permanent housing, the owner may rent the unit.

Section 8 Assisted Units:

Owners with residents under a project-based Section 8 contract whose unit was rendered uninhabitable can temporarily lease a unit in another building, which is habitable, under Uniform Physical Condition Standards. The owner can sign a temporary lease on behalf of the displaced Section 8 resident and begin to voucher for the contract rent for that temporary unit. The owner then pays the contract rent on the temporary dwelling until the resident’s permanent rental unit has been restored to a habitable condition and the owner notifies the resident that they may resume occupancy of their unit. The resident is still responsible for resident’s share for the temporary unit.

Should the displaced resident fail to return, the owner may rent the repaired unit to an eligible Section 8 applicant. Before doing so, however, the owner must inform the tenant in writing that their assistance is terminated. In the event that the owner rents the unit to an eligible Section 8 applicant, the owner must first terminate the lease that the owner executed on behalf of the displaced resident. In addition, should the temporarily displaced resident move from the temporarily leased unit before their permanent rental unit is repaired and made available for their return, the owner can no longer voucher for the temporary unit.

Once the original unit is fully repaired and ready for occupancy, all Section 8 provisions apply. This arrangement calls for close contact and cooperation between the owner and the resident.

In the event the owner may wish to rent temporarily a vacant Section 8- assisted unit to a FEMA-certified displaced resident, the Department will allow an owner to house this resident. However, the owner can only voucher and the Department may only pay Section 8 housing assistance payments for units occupied by eligible Section 8 families. Therefore, there would be no housing assistance payment made on behalf of a non-eligible Section 8, FEMA certified resident.

FHA-Insured Projects in Development Phase:

Vacant units in pipeline properties may be made available for temporary housing and permanent housing, if they can be released early for this purpose. Owners and local officials are encouraged to take the necessary steps to make units available.

Insurance Loss Draft Approval:

The Hub Director has the authority to execute insurance loss drafts. Mortgagees are encouraged to expedite their approval of the draft as well.

Office of Affordable Housing Preservation (OAHP) (Formerly Office of Multifamily Housing Assistance and Restructuring – OMHAR):

For properties going through the mark-to-market process, OAHP will grant a reasonable extension of time for owners impacted by the declared disaster. This will allow for additional time to hold resident meetings and for delays in property inspections and/or appraisals for affected properties. For owners whose OAHP properties are not affected, but who have documented properties elsewhere affected by the declared disaster, causing them to be delayed in their responsiveness on any property going through debt restructuring, OAHP will take these factors into account when exercising its discretion about an owner's responsiveness and in imposing time-related penalties.

Use of Reserves/Owner Contribution:

The Department will allow the use of reserve escrows for immediate project use to augment cash flow for the period of the emergency. Owners must negotiate and sign a repayment plan with HUD. Reserves must be replenished from local, state, or federal benefit programs as well as insurance proceeds. Owner contributions during the emergency period can be repaid to the owner under a plan approved by HUD.

Departmental Enforcement Center:

Owners adversely affected by a declared disaster are encouraged to contact the appropriate satellite office of the Departmental Enforcement Center (DEC), in writing, if they are unable to respond in a timely manner to any correspondence or notices issued by the DEC. Based on the documentation submitted by owners, the DEC will consider the effect of the disaster on the owner's ability to comply and will exercise discretion in judging responsiveness before imposing any time-related penalties or delaying inspections, as appropriate.

Questions:

Questions about this Notice should be addressed to the Office of Multifamily Housing Asset Management.

John C. Weicher
Assistant Secretary for Housing-
Federal Housing Commissioner

Distribution: W-3-1,