

## **Notice to Owners of Colorado Low-Income Housing Tax Credit (LIHTC) Properties Regarding Hurricane Katrina Evacuees – Revised as of September 12, 2005**

On September 9, 2005, the IRS released Notice 2005-69 providing further guidance to owners of tax credit properties in the United States who wish to house hurricane evacuees. The notice is attached.

The Notice allows the suspension of certain requirements under Section 42 of the Internal Revenue Code in order to temporarily house individuals displaced due to Hurricane Katrina (displaced individuals).

In response to the guidance provided in the Notice, the Colorado Housing and Finance Authority (CHFA) announces the following procedures for owners and managers of LIHTC properties seeking to lease restricted units to evacuees of Hurricane Katrina.

### **Seven Requirements for Achieving Relief under the Notice**

Owners who seek relief under this Notice must meet all of the following requirements:

1. The owner must obtain approval from CHFA. Owners who are seeking relief under this Notice must submit a written request for approval by CHFA.
  - a. The request must include the name of the property and a statement that the property has been listed on the National Emergency Resource Registry, (please see Requirement 2).
  - b. The request should be sent to your CHFA Asset Management Officer.
  - c. CHFA will review the request and if approved, will send a written approval to the owner.
2. The owner must list the property on the National Emergency Resource Registry (NERR) maintained by the Department of Homeland Security. The web site for listing the property is [www.SWERN.gov](http://www.SWERN.gov).
3. The displaced individuals must have resided in an Alabama, Louisiana, or Mississippi jurisdiction designated for Individual Assistance by FEMA as a result of Hurricane Katrina. These jurisdictions are listed on the attached Hurricane Katrina Displaced Household Certification.
4. The owner must have a certification completed for each unit that is occupied by displaced individuals. Please use the attached "Hurricane Katrina Displaced Household Certification". The certification must be retained as part of the property's records in accordance with the LIHTC Record Retention Requirements.
5. Owners should make reasonable attempts to verify the status of the displaced individuals. If available, obtain any documentation verifying their status such as copies of FEMA assistance documentation or photo identification. If documentation is not available, note this in the file along with the completed Hurricane Katrina Household Certification.
6. Rents for the low-income units housing displaced individuals must not exceed the applicable LIHTC maximum rent for the unit.
7. Existing residents in occupied low-income units cannot be evicted or have their tenancy terminated in order to house displaced individuals.

If owners can verify displaced individuals as fully tax credit eligible, the owner may treat the unit as a tax credit unit provided that all of the verification and certification requirements under Section 42 are met.

### **Temporary Housing Period**

The Temporary Housing Period (the period of time in which the Notice may be applied) begins August 29, 2005 and ends September 30, 2006.

### **Units during the First Year of the Credit Period**

Units temporarily occupied by displaced individuals during the first year of the credit period will be counted as qualified tax credit units for purposes of determining the applicable fraction and for meeting the minimum set-aside requirement (20-50 or 40-60 test). After September 30, 2006, units occupied by displaced individuals will no longer be counted as qualified tax credit units until they are occupied by qualified households.

### **Units after the First Year of the Credit Period**

The status of a vacant unit after the first year of the credit period that becomes temporarily occupied by displaced individuals remains the same as the status of the unit before the displaced individuals moved in. The displaced individuals occupying these units will not be considered tax credit eligible. For example, a market unit that was vacant before the beginning of the Temporary Housing Period (before August 29, 2005), that is now occupied by displaced individuals will continue to be treated as a market unit even though it is temporarily occupied by the displaced individuals. A low-income unit that was vacant before the beginning of the Temporary Housing Period that is now occupied by displaced individuals will continue to be treated as a low-income unit even though it is now occupied by displaced individuals. A unit that had never been occupied before the beginning of the Temporary Housing Period that is now occupied by displaced individuals will continue to be treated as a never-occupied unit even though it is now occupied by displaced individuals.

### **Suspension of Available Unit Rule and Non-Transient Rule**

The Available Unit Rule and the Non-Transient Rule do not apply to units occupied by displaced individuals during the Temporary Housing Period. These rules, along with the requirement that reasonable attempts be made to market vacant units, will once again apply after September 30, 2006.

### **Other Rules**

All other rules and requirements of Section 42 will remain in effect during the Temporary Housing Period.

### **Important!! – Please note that the Notice does not refer to projects financed with tax-exempt bonds. Those projects must still comply with federal tax law requirements.**

This document is not intended to provide tax or legal advice. For specific guidance on the treatment of individual properties, please contact your legal council or tax advisor.

If you have any questions, please contact your Asset Management Officer or contact Tasha Weaver at 303-297-7429 (email: [tashaw@colohfa.org](mailto:tashaw@colohfa.org).)