

## **Questions and Answers: LIHTC Housing and Hurricane Katrina**

This document has been prepared based on the information received by federal agencies as of September 12, 2005. It is not intended to provide specific legal advice or tax advice to readers. For specific tax and or legal advice, the reader should contact their own advisers.

### **What is OCCH doing for Hurricane Katrina victims?**

The OCCH Board approved an emergency proposal to provide relief to Hurricane Katrina victims. The strategy is to continue OCCH's role as an affordable housing financial intermediary, supporting the efforts of our partners and coordinating with other agencies. This Question and Answer sheet is one effort to share information and coordinate with our partners.

The OCCH Board has offered to provide flexible financial assistance to provide aid to the victims from OCCH's unrestricted cash reserves. OCCH will match dollar for dollar any OCCH staff and board contributions to relief organizations. The remainder of the money will be made available to evacuees arriving into our partners' affordable housing in Ohio in order to:

- Purchase of furniture, toiletries, groceries or other personal needs of evacuees
- Pay security deposits and initial rents for evacuees
- Provide immediate bridge financing for other public funds that cannot be immediately released

For more information on OCCH's policies, please contact Joe Pimmel at [jpimmel@occh.org](mailto:jpimmel@occh.org) or 614-224-8446.

### **Are Hurricane Katrina evacuees coming to Ohio?**

To date, nearly 2000 households (representing over 5000 individuals) have evacuated to Ohio. FEMA (Federal Emergency Management Agency) has stopped large scale evacuations of people from New Orleans and Houston to other states. Many households are making their way to Ohio on their own, through family or friends, through churches, or through the efforts of local relief organizations.

If these families have not yet done so, they need to register with FEMA at [www.fema.gov](http://www.fema.gov) or 1-800-621-FEMA [3362]. Households arriving in Cleveland, Cincinnati, and Columbus should visit Welcome Centers that have been established to link these families to housing and a full range of services and benefits. Families in other communities should contact the Red Cross or other local service agency. The Red Cross has established a toll-free number to provide financial resources and referrals to services for hurricane survivors across the nation at 1-800-975-7585.

### **What guidance has the IRS provided for housing victims of Hurricane Katrina?**

On Friday, September 9, the IRS issued Notice 2005-69 entitled "Relief from Certain Low-Income Housing Credit Requirements Due to Hurricane Katrina." This followed an earlier, brief statement waiving several regulations for Hurricane victims. The notice addressed the following requirements:

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### (1) Major Disaster Area

The displaced individual must have resided in a jurisdiction designated for Individual Assistance by FEMA as a result of Hurricane Katrina.

### (2) Approval of State Housing Credit Agency

The project owner must obtain approval from the state housing credit agency for the relief described in this notice. The state housing credit agency will determine the appropriate period of temporary housing for each project, not to extend beyond September 30, 2006.

### (3) Certifications and Recordkeeping

- Project owners are required to maintain and certify information for each displaced individual temporarily housed in the project, including:
  - Name
  - Address of damaged property
  - Social Security #
  - Signed statement (under penalty of perjury) that household requires temporary housing
  - Date temporary housing began and date project will discontinue providing temporary housing (as established by HFA)
- The owner must keep all this info just like regular certification info (for 6 years after move-out)
- The owner must list project on the National Emergency Resource Registry (NERR) on [www.SWERN.gov](http://www.SWERN.gov)

### (4) Rent Restrictions

Rents for the low-income units housing displaced individuals must not exceed the existing rent-restricted rates

### (5) Protection of Existing Tenants

Existing tenants in occupied low-income units cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.

### **What guidance has OHFA provided?**

The Ohio Housing Finance Agency is advising owners of tax credit projects to house displaced families as vacancies permit. Any compliance issues that result from doing so before final guidance is issued by the IRS will be waived by OHFA, provided the issues can be resolved within 12 months. The Agency may require additional due diligence from owners once the IRS issues additional guidance. Owners who have questions may feel free to contact the OHFA Office of Program Compliance at 1-888-362-6432.

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Owners and managers who house displaced households under the IRS waiver must ask the household to complete the following forms:

- Temporary Housing Self-Certification of Income
- Affidavit of Displacement.
- Temporary Housing Lease Addendum ( completed at the time the lease is executed).

In addition, OHFA requests that owners report, separately, all households provided housing under the waiver. The 2005 Disaster Relief Annual Report must be submitted on March 1, 2006 with the Annual Owner Report and Owner Certification.

Copies of these forms are attached to this memo, but they are also available on the OHFA website. Check with OHFA as they update their requirements:

[http://www.ohiohome.org/disaster\\_relief](http://www.ohiohome.org/disaster_relief)

### **What guidance has HUD provided on projects with HOME funds?**

HUD issued “Guidance on Use of HOME Funds and Waiver of HOME Requirements to Facilitate Assistance to Persons Displaced by Hurricane Katrina.”

This waiver allows self-certification of income in lieu of source documentation. Owners must document the FEMA registration and retain the self-certification. Because eligibility for HOME assistance is based upon anticipated income for the coming 12 months, many families that would ordinarily not qualify as low-income will be eligible to occupy HOME-assisted units. For subsequent annual income certifications, evacuees will be subject to the same requirements as would any other tenant. If an evacuee is found on subsequent income certifications to exceed the HOME income limits, the household will be subject to the same requirements as other over-income HOME tenants pursuant (i.e., the rent may be increased, but the household cannot be displaced).

The HOME statute requires owners of HOME-assisted rental projects to adopt written tenant selection criteria. Because this requirement is statutory, HUD cannot waive the provision to permit preference for admission to be accorded to persons displaced by the Hurricane Katrina. However, owners may be requested to add such a preference to their written tenant selection criteria so that evacuees can be housed expeditiously.

(The memo also addresses HOME standards for Tenant-based Rental Assistance. Check for further information at: <http://www.hud.gov/offices/cpd/library/katrina/> )

### **What guidance has HUD provided on projects with project-based Section 8 subsidy?**

In notice 04-22, HUD provided “Disaster Recovery Guidance by Multi-family Housing After a Presidentially Declared Disaster,” and they recently provided clarification and additional guidance regarding this memo in response to Hurricane Katrina. Some highlights from these memos include:

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In a property where there is Section 8 assistance, vacant units can be made available to any displacee on a first come first served basis for temporary housing assistance. If a displacee is requesting permanent housing in that unit, they can be placed at the top of the waiting list if they meet all other program guidelines, including income. Units housing temporary displacees will not receive Section 8 rental assistance. In order to receive the Section 8 rental assistance, you must conduct your standard intake. (Once Section 8 rental assistance is received, FEMA rental assistance could be lowered).

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 the resident is no longer FEMA eligible. Rents for these temporary housing units must be set at the rents that were in effect immediately prior to the disaster (and they should follow local Fair Market Rents).

Owners should amend their leases to state that the tenants are certifying they are eligible for assistance according to Notice 04-22. If the tenant was found to have lied, they can be evicted.

### **How will Section 8 vouchers issued in disaster-stricken areas be handled?**

Displaced hurricane victims that lived in public housing or received Section 8 vouchers can take their vouchers into any jurisdiction that has a public housing authority (PHA) that administers a Section 8 voucher program. Voucher holders do not need to reapply, but they do need to contact the local PHA or local HUD office of the community where they have settled.

You can refer these individuals to a HUD toll-free hotline (800-955-2232) for further assistance. If the family arrives without any documentation, refer them to the local public housing authority, which will obtain the name and SSN of the Head of Household that holds the voucher. The PHA will verify their current eligibility. The disaster victims' vouchers will be funded based on the new PHA's payment standard. For example, if a voucher is worth \$600 in New Orleans, but the voucher-holding family moves to a community with a higher payment standard of \$800, then housing assistance payment paid on behalf of the family will be based on the \$800 payment standard.

### **Will more Section 8 vouchers be issued?**

HUD has not expanded the Section 8 program at this time.

### **What exactly is waived for housing tax credit properties?**

For properties beyond the first year of the credit period, the income limitations, available unit rule, prohibition of transient occupancy, and unit vacancy rule are all waived.

### **Who is eligible for temporary housing?**

The displaced individual must have resided in a county designated for Individual Assistance by FEMA as a result of Hurricane Katrina.

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The counties designated for Individual Assistance include:

- ▶ 64 Louisiana parishes: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Caldwell, Calcasieu, Cameron, Catahoula, Claiborne, Concordia, Desoto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Jefferson Davis, Lafayette, Lafourche, LaSalle, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Pointe Coupee, Plaquemines, Rapides, Red River, Richland, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Landry, St. Mary, St. Martin, St. Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana and Winn;
- ▶ 52 Mississippi counties: Adams, Amite, Attala, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lee, Lincoln, Lowndes, Madison, Marion, Monroe, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Webster, Wilkinson, and Winston;
- ▶ 6 Alabama counties: Baldwin, Clarke, Choctaw, Mobile, Sumter and Washington; and
- ▶ 3 Florida counties: Broward, Miami-Dade and Monroe.

## **What are property owners required to do?**

- The owner must list project on the National Emergency Resource Registry (NERR) on [www.SWERN.gov](http://www.SWERN.gov)
- In Ohio, property owners must obtain approval from OHFA. The state housing credit agency will determine the appropriate period of temporary housing for each project, not to extend beyond September 30, 2006. Contact the OHFA Office of Program Compliance at 1-888-362-6432.

## **Can owners conduct screening?**

OCCH strongly recommends that owners follow their standard screening processes as outlined in their Tenant Selection Plans, including criminal background checks. The Welcome Centers established in Cleveland, Cincinnati, and Columbus work with OHFA to generate background checks.

## **Do I execute a Tenant Income Certification form with the evacuated household?**

OHFA's requires 3 forms:

- Temporary Housing Self-Certification of Income
- Affidavit of Displacement.
- Temporary Housing Lease Addendum ( completed at the time the lease is executed).

OHFA does not require the household to complete its standard Tenant Income Certification form, but it is probably a good idea to have the family complete it in case they decide to become long-term permanent residents.

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### **Do I execute a lease with the family?**

OCCH strongly recommends that your property execute a lease with all households. If they are not going to stay for more than 6 months, also execute a Temporary Housing Lease addendum (see attached). Please note that your lease term may be for less than 6 months for disaster-affected applicants seeking temporary housing. Additionally, the waiver from the IRS is likely to expire one year from issuance, so leases should not extend beyond approximately 9/1/06.

### **What should my files contain for evacuated households?**

Owners should have a lease file with an application, an Affidavit of Displacement (attached) or a an Award Letter from FEMA indicating the household's qualification for disaster relief assistance, Lease, Temporary Housing Lease Addendum (attached), Temporary Housing Self Certification of Income (attached), and Tenant Income Certification. All other program requirements apply (i.e. the unit must be suitable for occupancy, the unit must be rent restricted, the household must be recertified on an annual basis, etc.)

### **Will a unit leased to an evacuated household that does not income qualify trigger the Available Unit Rule?**

No. Units leased to households that do not income qualify will not trigger a violation of the Available Unit Rule.

Important reminder to property owners: Under the Housing Tax Credit program evacuees moving into your property are protected under the Good Cause evictions prohibitions described in Revenue Ruling 2004-82. In accordance with this ruling, tenants may only be evicted for good cause; owners may not simply choose not to renew a lease.

### **Will the disaster-affected households have assistance to pay the rent?**

FEMA has Assistance for Individuals and Households. See the question below for details on how FEMA works.

### **How does reimbursement from FEMA (Federal Emergency Management Agency) work?**

FEMA has Assistance for Individuals and Households. This program, which may include cash grants of up to \$26,200 per individual or household, includes rental assistance in the form of cash payment for a temporary rental unit or a manufactured home. The assistance is also used to cover home repair, home replacement, medical, dental, funeral, transportation, and other disaster-related needs. The funds are available for up to 18 months after the disaster. The funds are paid directly to the household, who are expected to use this money to pay for housing and other needs. The assistance comes in the form of check, direct deposit, or debit card. Because the assistance does not come directly to property owners, and because owners will not be reimbursed for letting evacuees rent prior to receiving assistance, we encourage you to sign a lease with the household. Some property owners have asked residents to sign a lease addendum specifying that if the

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resident does receive assistance from FEMA or another source, the assistance will be given to the housing provider for an agreed upon amount.

To qualify for this assistance, a household must apply with FEMA (by phone at 1-800-621-FEMA [3362] or online at [www.FEMA.gov](http://www.FEMA.gov) by clicking to the “Online Individual Assistance Center”). Assistance comes in the form of direct deposit, check, or debit card.

### **Does a FEMA identification number or American Red Cross landlord verification guarantee payment?**

In Texas, some people are showing up at properties trying to lease units with only a FEMA identification number or a landlord verification form from the American Red Cross. Neither of these items guarantees payment to the owner, nor do they ensure that the holder has been approved for assistance. The FEMA registration number indicates that evacuees have registered with FEMA and applied for assistance. It doesn't mean they have been approved for any assistance.

The Red Cross form is something the property owner fills out for the Red Cross to verify that the property owner is legitimate and that a unit is available at a specific cost. The case number from that form is important, because it is how they track the victims. The form does make reference to the owner giving authorization to potentially receive payment from the Red Cross through a Disbursing Order (DO) and to whether the owner will be willing to submit the DO to the Red Cross for payment, but the form does not commit the Red Cross to pay anything or contract for rent between a property owner and a disaster victim. In some cases, the Red Cross may pay the first month's rent for evacuees, and in these circumstances, the form and the case number are needed.

### **Are owners required to rent to applicants who qualify for FEMA support?**

There is no Ohio or federal law requiring a private property owner who doesn't receive any government subsidies to make the property available to rental applicants just because the applicant qualifies for FEMA support.

### **How should I handle a displaced household that intends to permanently relocate to Ohio?**

From a compliance perspective; these households should be treated the same as any other renter. Your owner must determine how to handle and apply other leasing criteria. OCCH strongly recommends that owners follow their standard screening processes including criminal background checks.

To assist a family that intends to permanently relocate, follow the steps for determining eligibility. These households most likely will have no documentation of their income and/or assets. If the household is unable to provide documentation of their anticipated income or assets, please use a self certification to document their eligibility. A sample

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form is attached. At annual recertification it is expected that the household will provide documentation of income and assets.

### **If the household intends to stay in Ohio and does not have a job at this time, what should I do?**

If a displaced household worked in their home state and anticipates that they will be able to find comparable employment in Ohio, unless they have actually been offered a job, their income from employment is zero.

### **How long should I retain the files for temporary residents?**

Files for the temporary residents should be retained for six years after the move-out date.

### **What rent should I charge?**

Rent for the units housing displaced individuals must not exceed the existing rent-restricted rates for the low-income units established under Internal Revenue Code Section 42(g) (2).

### **What happens at the end of the “temporary” period?**

At the end of the temporary housing period, and in no event later than approximately September 30, 2006, tenancy of displaced individuals whose income exceeds the applicable income limits must terminate. Tenants who qualify for a unit under the requirements of Internal Revenue Code Section 42 may complete the Tenant Income Certification process and enter into a valid lease.

For units that were previously qualified, a unit reverts to the status (either LIHTC or market rate) that it had prior to housing temporary displaces.

If the unit was not originally qualified, the unit would remain qualified for applicable fraction and minimum set-aside purposes, but the status of the unit would be determined by whether the family was income-qualified, had the appropriate paperwork, and met the other LIHTC regulations. Be very careful about moving families into units that were never qualified.