

LIHTC MONTHLY REPORT

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Hurricane Katrina: LIHTC Properties Provided Income Limitation Exemption

By Alex Ruiz, Staff Writer, Novogradac & Company LLP

Editor's Note: In the wake of Hurricane Katrina, countless state and federal agencies announced housing related relief measures. A summary of these efforts to date is outlined in this article; as new announcements and guidance are released they will be available online at www.taxcredithousing.com.

The Treasury Department and the Internal Revenue Service (IRS) announced on September 2, 2005 that because of the widespread devastation to housing caused by Hurricane Katrina, they would temporarily suspend income limitation and non-transient requirements for qualified low-income housing tax credit (LIHTC) projects located anywhere in the United States. In IRS Notice 2005-69: Relief from Certain Low-Income Housing Credit Requirements Due to Hurricane Katrina, published on September 9, the IRS gave guidance on the parameters for this relief. Details about complying with the notice can be found in the October 2005 issue of the *Property Compliance Report*.

Property owners in and around the disaster area can also consult existing IRS guidance regarding disaster relief for LIHTC developments. Revenue Procedure 95-28 discusses IRS relief for major disaster areas. Chief Counsel Advice 200134006 includes guidance regarding casualty losses under Internal Revenue Code (IRC) Section 42.

Temporary Waiver of Federal Housing Regulations Sought

Despite the income limitation and non-transient exemptions, many properties are limited by other federal subsidy requirements that prevent them from making vacant units available to evacuees. For example, the IRS has not waived the income restrictions required under IRC Section 142(d) for developments financed with tax-exempt bonds. As such, the National Multi Housing Council (NMHC) and National Apartment Association's (NAA) joint legislative program estimates that thousands

of vacant apartments are being overlooked.

"Federal officials need to rethink their post-disaster housing strategies," said Jim Arbury, senior vice president of government affairs for the NMHC/NAA joint legislative program, in a statement released on September 23. "The Federal Emergency Management Association's (FEMA) plan to spend billions to create isolated mobile home 'cities' makes it clear that they do not fully understand the housing resources already available to them."

"The apartment industry is prepared to house these people right now," he said. "Apartments are immediately available at affordable rates and without the need for any massive infusion of additional investment by the government. According to the Census Bureau, there are 1.1 million vacant rental units in the South, and three-quarters of them are located either in the unaffected portions of Louisiana, Mississippi and Alabama, or in nearby states."

NMHC/NAA urged policy makers to grant a broad temporary waiver of existing affordable housing regulations for LIHTC, tax-exempt bond and Section 8 properties so those units can be opened up to hurricane evacuees. The groups also urged FEMA to create housing vouchers to be used at these available apartment communities or contract directly with apartment owners for units. Finally, they called on FEMA to aggressively publicize the www.hurricanehousing.net web site, which was created at the suggestion of FEMA to serve as a national registry of available vacant rental units.

"The apartment industry is committed to working with Congress and the federal agencies involved in the hurricane relief effort to find a realistic and practical

(continued on page two)

Hurricane Katrina:

(continued from page one)

solution to the tremendous housing needs of Hurricane Katrina's evacuees," said Arbury. "But we need to recognize that the scope of this disaster calls for new thinking and a new playbook, at least where housing is concerned."

Congress

As the *LIHTC Monthly Report* went to print, the request to waive additional regulations had not been answered by the Treasury Department. However, Sens. Mary Landrieu, D-La., and David Vitter, R-La., introduced S. 1765, the Louisiana Katrina Reconstruction Act., that would change IRC Section 142 to be consistent with IRC Section 42 to allow properties financed with tax-exempt bonds and LIHTCs to be eligible for relief from income restrictions provided by the Internal Revenue Service in Notice 2005-69. Additional information regarding relief for tax-exempt bond issuers and tax-exempt bond housing affected by the hurricane can be found in the October 2005 *Housing Bond Report*.

Much of the focus in Congress has centered on housing issues. The House Financial Services Committee Subcommittee on Housing and Community Opportunity held a hearing on September 15 to evaluate housing relief options and heard testimony from representatives of the National Council of State Housing Agencies, National Association of Affordable Housing Lenders, National Multi Housing Council, Mortgage Bankers Association of America, National Association of Home Builders and others.

State Housing Agencies

At the state level, housing finance agencies around the country quickly moved to action, creating inventories of vacant housing units and preparing to match them with evacuees. Many state agencies have released guidance for property owners for complying with IRS Notice 2005-69. Links to guidance and forms from state housing agencies can be found online at www.novoco.com/disaster_relief.shtml.

Some state agencies' operations were significantly impacted by the hurricane. The Louisiana Housing Finance Agency (LHFA) was closed briefly and upon reopening announced that the deadlines for submission of applications for the LIHTC and HOME programs were delayed until October 31. On its web site, LHFA reported that "although the circumstances warranted a change in the deadlines, LHFA is strongly committed to moving forward to develop and preserve affordable housing for the residents of the state."

HUD, USDA and FEMA

It became evident quite quickly that because of the damage sustained by the disaster area's housing stock that HUD would be central to

(continued on page three)

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Hurricane Katrina:

(continued from page two)

the immediate and long-term relief efforts on the Gulf Coast. HUD has since announced several actions to provide disaster relief, including deadline extensions, regulatory relief and guidance for a number of programs. Details of its ongoing and planned efforts are listed at www.hud.gov/katrina/index.cfm

On September 8, HUD Secretary Alphonso Jackson announced a partnership with the nation's mayors and county officials to identify available homes. Initially, HUD identified nearly 3,200 vacant single-family HUD-owned properties in five states near the affected areas. In addition, public housing authorities within a 500-mile radius of New Orleans estimated they had approximately 5,600 vacant units that could be made available to public housing residents forced to evacuate their homes. With the help of the U.S. Conference of Mayors (USCM) and the National Association of Counties (NACo), HUD said it anticipated that thousands of additional homes may be available. "Having a roof over your head is one of the most basic human needs," said Jackson.

HUD reports the response has been overwhelming. For example, Detroit Mayor Kwame Kilpatrick and Philadelphia Mayor John Street each offered more than 1,000 homes. Chicago Mayor Richard Daley offered a minimum of 885 units capable of housing an estimated 1,500 persons. Local leaders in Allegheny County, Pa. offered to assist 1,000 displaced persons find temporary housing and Miami-Dade County offered to house another 3,000 people.

On September 23, HUD and the Department of Homeland Security (DHS) announced a series of measures to accelerate the delivery of federal assistance and provide transitional housing for victims of Hurricane Katrina. "Our goal is to use existing resources in an innovative way to help all displaced individuals and families move from temporary shelters to more stable, safe and sufficient housing," said DHS Secretary Michael Chertoff. "Through this coordinated effort, the federal government is taking quick and immediate action to cut through red tape and deliver immediate assistance to evacuees."

"Today we are offering residents more than just a roof over their heads," said Jackson. "This is an opportunity for thousands of the victims of Hurricane Katrina to get back on their feet as they pick up the pieces and start anew. This administration remains committed to filling the housing void in the Gulf Coast region and we will continue to work with our partners to help reunite families and provide hope and healing to those who need it most."

DHS says that, with the combined efforts from the Federal Emergency Management Agency (FEMA) and HUD, it will expedite

(continued on page four)

Hurricane Katrina:

(continued from page three)

housing assistance to all evacuees unable to meet immediate housing needs. Evacuees from the hardest-hit portions of Alabama, Mississippi and Louisiana generally fall into four distinct types of households: previous homeowners, renters, families who lived in HUD assisted housing, and those who were homeless prior to the hurricane. Through FEMA's Individual and Households Program (IHP), DHS will process expedited transitional housing assistance for qualified homeowners and renters displaced by Hurricane Katrina. Because not all evacuees are eligible for assistance through the IHP program, displaced families, including former HUD-assisted evacuees and those homeless prior to Hurricane Katrina will qualify for HUD's Housing Assistance Program. Details about these programs can be found in the October 2005 *Property Compliance Report*.

Industry Associations

The multifamily and affordable housing industries came forward immediately and volunteered resources not only in the form of available housing units, but many industry participants have been quick to make suggestions for how they could do even more to better serve the victims of the disaster. The Affordable Housing Tax Credit Coalition (AHTCC) prepared and released a list of proposed adjustments to the LIHTC and multifamily bond programs to help meet the long-term housing needs resulting from Hurricane Katrina. The Local Initiatives Support Corporation (LISC) and the Enterprise Foundation also suggested some changes in law that could better

enable the LIHTC to be a resource to help the affected areas rebuild. LISC and the Enterprise Foundation have also announced a joint effort called the Community Recovery Fund that will operate through local community based development organizations focused on revitalization of their neighborhoods.

The National Trust for Historic Preservation (NTHP) launched a campaign to help ensure the preservation of historic buildings, neighborhoods and communities in the Gulf Coast region. The campaign's efforts to date include a request to the Treasury Department for relief for taxpayers owning Rehabilitation Tax Credit (RTC) projects affected by the Hurricane Katrina disaster and also suggesting several steps to enable the RTC to function more efficiently as a tool for redevelopment in the affected region. In addition, NTHP President Richard Moe sent a letter to federal, state and local officials in the Gulf Coast Region urging preservation of affected historic areas. Additional information about the efforts involving the RTC to rebuild the affected areas will be available in the November 2005 *LIHTC Monthly Report*.

Additional federal agencies such as the U.S. Department of Agriculture's Rural Housing Service and numerous industry associations have created lists of resources and guidance for their constituents and other members of the affected public. Links to guidance, statements and resources from these sources are available online at www.taxcredithousing.com. ❖

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