

Part III-Administrative, Procedural, and Miscellaneous

Relief from Certain Low-Income Housing Credit Requirements Due to Hurricane Katrina

Notice 2005-69

The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects in the United States as a result of the devastation caused by Hurricane Katrina. This relief is being granted pursuant to the Service's authority under § 42(n) and § 1.42-13(a) of the Income Tax Regulations.

BACKGROUND

On August 29, 2005, the President declared major disasters for the States of Alabama, Louisiana, and Mississippi as a result of Hurricane Katrina. These declarations were made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Title 42 U.S.C. 5121-5206 (2000 and Supp. II 2002). Subsequently, the Federal Emergency Management Agency (FEMA) designated jurisdictions for Individual Assistance.

State housing credit agencies throughout the United States have requested that the Service allow owners of low-income housing credit projects to provide temporary housing in vacant units to individuals who resided in jurisdictions designated for Individual Assistance in Alabama, Louisiana, and Mississippi and who have been displaced because their residences were destroyed or damaged as a result of the devastation caused by Hurricane Katrina

(displaced individuals). State housing credit agencies have further requested that the temporary housing of the displaced individuals in low-income units without regard to income not cause the owners to lose low-income housing credits. Based upon these requests and because of the widespread damage to housing caused by Hurricane Katrina, the Service has determined that any housing credit agency of a state or a possession of the United States (state housing credit agency) may provide approval to project owners in their respective state or possession to provide temporary emergency housing for displaced individuals in accordance with this notice.

I. SUSPENSION OF INCOME LIMITATIONS

The Service has determined that it is appropriate to temporarily suspend certain income limitation requirements under § 42 for certain qualified low-income projects. The suspension will apply to low-income housing projects approved by the state housing credit agency, in which vacant units are rented to displaced individuals. The state housing credit agency will determine the appropriate period of temporary housing for each project, not to extend beyond September 30, 2006 (temporary housing period).

II. STATUS OF UNITS

A. Units in the first year of the credit period

A displaced individual temporarily occupying a unit during the first year of the credit period under § 42(f)(1) will be deemed a qualified low-income tenant for purposes of determining the project's qualified basis under § 42(c)(1), and for meeting the project's 20-50 test or 40-60 test as elected by the project owner

under § 42(g)(1). After the end of the temporary housing period established by the state housing credit agency (not to extend beyond September 30, 2006), a displaced individual will no longer be deemed a qualified low-income tenant.

B. Vacant units after the first year of the credit period

During the temporary housing period established by a state housing credit agency, the status of a vacant unit (that is, market-rate or low-income for purposes of § 42 or never previously occupied) after the first year of the credit period that becomes temporarily occupied by a displaced individual remains the same as the unit's status before the displaced individual moves in. Displaced individuals temporarily occupying vacant units will not be treated as low-income tenants under § 42(i)(3)(A)(ii) (a low-income unit that was vacant before the effective date of this notice will continue to be treated as a vacant low-income unit even if it houses a displaced individual, a market rate unit that was vacant before the effective date of this notice will continue to be treated as a vacant market rate unit even if it houses a displaced individual, and a unit that was never previously occupied before the effective date of this notice will continue to be treated as a unit that has never been previously occupied even if it houses a displaced individual). Thus, the fact that a vacant unit becomes occupied by a displaced individual will not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis, nor will it affect the 20-50 test or 40-60 test of § 42(g)(1). If the income of occupants in low-income units exceeds 140 percent of the applicable income limitation, the temporary occupancy of a unit by a displaced individual will not cause application

of the available unit rule under § 42(g)(2)(D)(ii). In addition, the project owner is not required during the temporary housing period to make attempts to rent to low-income individuals the low-income units housing displaced individuals.

III. SUSPENSION OF NON-TRANSIENT REQUIREMENTS

The non-transient use requirement of § 42(i)(3)(B)(i) shall not apply to any unit providing temporary housing to a displaced individual during the temporary housing period determined by the state housing credit agency in accordance with section I of this notice.

IV. OTHER REQUIREMENTS

All other rules and requirements of § 42 will continue to apply during the temporary housing period established by the state housing credit agency. After the end of the temporary housing period, the applicable income limitations contained in § 42(g)(1), the available unit rule under § 42(g)(2)(D)(ii), the non-transient requirement of § 42(i)(3)(B)(i), and the requirement to make reasonable attempts to rent vacant units to low-income individuals shall resume. If a project owner offers to rent to a displaced individual after the end of the temporary housing period, a displaced individual must be certified under the requirements of § 42(i)(3)(A)(ii) and § 1.42-5(b) and (c) to be a qualified low-income tenant. To qualify for the relief in this notice, the project owner must additionally meet all of the following requirements:

(1) Major Disaster Area

The displaced individual must have resided in an Alabama, Louisiana, or

Mississippi 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

To comply with the requirements of § 1.42-5, project owners are required to maintain and certify certain information concerning each displaced individual temporarily housed in the project, specifically: name, address of damaged residence, social security number, and a statement signed under penalties of perjury by the displaced individual that, because of damage to the individual's residence in an Alabama, Louisiana, or Mississippi jurisdiction designated for Individual Assistance by FEMA as a result of Hurricane Katrina, the individual requires temporary housing. The owner must list the project on the National Emergency Resource Registry (NERR) maintained by the Department of Homeland Security. The NERR assists coordination efforts between resources that are needed and resources that are available. The web site for listing the project is: www.SWERN.gov.

The owner must also certify the date the displaced individual began temporary occupancy and the date the project will discontinue providing temporary housing as established by the state housing credit agency. The

certifications and recordkeeping for displaced individuals must be maintained as part of the annual compliance monitoring process with the state housing credit agency.

(4) Rent Restrictions

Rents for the low-income units housing displaced individuals must not exceed the existing rent-restricted rates for the low-income units established under § 42(g)(2).

(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.

EFFECTIVE DATE

This notice is effective August 29, 2005 (the date of the President's major disaster declarations as a result of Hurricane Katrina).

PAPERWORK REDUCTION ACT

Pursuant to 5 CFR 1320.18(d), the Office of Management and Budget has waived the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) with respect to the recordkeeping requirements contained in this notice.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this notice is Jack Malgeri of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Mr. Malgeri on (202) 622-3040 (not a toll free call).

OKLAHOMA HOUSING FINANCE AGENCY

NOTICE TO OWNERS OF LOW INCOME HOUSING TAX CREDIT DEVELOPMENTS IN THE STATE OF OKLAHOMA

On September 21, 2005, the Board of Trustees of the Oklahoma Housing Finance Agency (OHFA) adopted a resolution authorizing the Staff of OHFA to implement Internal Revenue Service (IRS) Notice 2005-69 in response to the devastation caused by Hurricane Katrina. Accordingly, OHFA has drafted the following procedures for Section 42 Development Owners wishing to provide units to displaced households.

NOTE: This notice pertains solely to the LIHTC Program. Developments that also received funding through other federal sources, such as the Home Investment Partnerships Program (HOME) or the Community Development Block Grant Program (CDBG), should be advised that the rules and requirements of said programs may still be in full force and effect, and should be strictly followed absent written guidance from the agencies that administer those programs.

OHFA cautions development owners to be careful if housing families in vacant units in the first year of the credit period, which have never been occupied by a qualified household. Although permitted by IRS Notice 2005-69, housing displaced households in these units does not mean they have been occupied by qualified households. As of September 30, 2006, the units will revert back to their “never qualified” status if qualified households have not occupied the units by that time.

GENERAL:

This is a limited suspension of requirements. IRS Notice 2005-69 temporarily suspends certain requirements of Section 42 of the Internal Revenue Code (IRC). The Notice applies **only** to the income limitation requirement, the available unit rule, the unit vacancy rule, and the non-transient use requirements. **All other requirements of Section 42 of the IRC remain in full force and effect. This includes the prohibition against full-time student households.**

Other federal laws have not been waived or suspended. Therefore, families may **not** be housed in developments designated as Elderly. The Elderly designation is a specific exception to the prohibition against discrimination on the basis of familial status, as set forth in the Fair Housing Act.

There is a time limitation for relief under IRS Notice 2005-69. IRS Notice 2005-69 provides that relief may only be provided **through September 30, 2006**. On that date, or on the dates on which the displaced households actually vacate the premises, whichever is earlier, the vacant units utilized to provide such relief will revert back to the status they held prior to being occupied by the displaced households.

There is no waiver of State requirements. Only certain requirements of Section 42 of the IRC have been temporarily suspended for displaced households until September 30, 2006. **Specific requirements of the State of Oklahoma's Qualified Allocation Plan (QAP) have not been waived. This includes the prohibition against convicted felons residing in low-income housing tax credit developments.**

Income limitations: The income limitations of Section 42 of the Internal Revenue Code (IRC) have been temporarily suspended for displaced households. **However, rental rates for units rented to displaced households must not exceed the existing maximum rental rates for low-income units as established under Section 42 of the IRC.**

Non-Transient Rules: The non-transient use requirement of Section 42 has also been temporarily suspended. Therefore, vacant units may be rented to displaced households for any length of time. **Development owners renting vacant units to displaced households should prepare temporary housing lease addendums that are structured to terminate on or before September 30, 2006, setting forth the conditions as outlined in IRS Notice 2005-69.** A suggested form, titled "Temporary Housing Lease Addendum", is available on OHFA's website, www.ohfa.org.

Next Available Unit and Unit Vacancy Rules: The available unit rule and the unit vacancy rule have been temporarily suspended for those currently vacant units that are rented to displaced households.

PROCEDURES:

Approval of OHFA - Prior to providing relief to victims of Hurricane Katrina, development owners must obtain approval from the allocating agency, OHFA. Approval should be sought by utilizing a form available on OHFA's website, titled "Request to Provide Temporary Housing". Due to the emergency nature of the situation, some owners were given an informal, verbal approval shortly after the issuance of IRS Notice 2005-69. These owners must also obtain written approval by utilizing the above mentioned form.

Federal Emergency Management Agency (FEMA) Registration - The owner must register the participating development on the National Emergency Resource Registry at www.swern.gov.

Eligible Occupants –

1. Displaced households must register with FEMA. The displaced household must present an award letter from FEMA to the development owner, indicating their qualification for disaster relief assistance.
2. Displaced households must sign a self certification of income, containing as much information regarding the gross annual income of all household members as is reasonably possible to obtain. All adult members of the household must sign the

self certification. A form for this self certification can be accessed on OHFA's website, www.OHFA.org. The form is titled "Self-Certification of Income".

RECORDKEEPING

The development owner must retain a copy of the following in the compliance file for each unit occupied by a displaced family:

1. OHFA Approval Form
2. The development's FEMA registration
3. The occupant's FEMA registration
4. Temporary housing lease addendum
5. Self-certification of income, signed by all adult household members

Failure to maintain these records in the development files could result in a finding of non-compliance and the issuance of a Form 8823.

**Owner's Request to Oklahoma Housing Finance Agency
for Approval to Provide Temporary Housing
To Victims of Hurricane Katrina
as Authorized by Internal Revenue Service Notice 2005-69**

Date of Request: _____
Project Name: _____
Name of Owner: _____
OHFA Project Number: _____

Because of the devastation to housing caused by Hurricane Katrina, the Internal Revenue Service has issued Notice 2005-69 ("Notice"), which temporarily (until September 30, 2006) suspends certain requirements of Internal Revenue Code Section 42 ("Section 42") for projects participating in the Low Income Housing Tax Credit Program administered by the Oklahoma Housing Finance Agency (OHFA). The temporary suspension is exclusively for the benefit of households ("Displaced Household") who were displaced because their homes were destroyed or damaged by Hurricane Katrina and who have been designated by FEMA as a Displaced Household.

I request OHFA's approval for relief, pursuant to the Notice, for the development indicated above and hereby state that:

1. I have read and understand the Notice;
2. I intend to rent vacant units temporarily to Displaced Households.
3. Displaced Households will be required to present an award letter from FEMA indicating their qualification for disaster relief assistance;
4. Tenant files for each Displaced Household shall be retained as part of tenant documentation for at least 6 years after the due date (with extensions) for filing the federal income tax return for the applicable years, pursuant to 26 CFR Section 1.42-5(b)(2). The project will report, in a manner prescribed by OHFA, to OHFA regarding information about Displaced Households temporarily housed;
5. Rent for units leased to Displaced Households shall not exceed the existing rent-restricted rates for the low-income units as established under Section 42;
6. Upon receiving approval from OHFA, the development will be registered with the National Emergency Resource Registry, as maintained by the Department of Homeland Security; and
7. Existing tenants in occupied low-income units shall not be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced households.

Signature of Owner/Representative Printed Name of Owner/Representative Date

Contact Name: _____
Title: _____
Phone Number: _____ Fax Number: _____
E-Mail Address: _____

OHFA APPROVAL Date Not to exceed: _____
Term of Relief

**OKLAHOMA HOUSING FINANCE AGENCY
HOUSEHOLD INFORMATION/AFFIDAVIT OF DISPLACEMENT/
SELF CERTIFICATION OF INCOME
FOR HURRICANE KATRINA EVACUEES**

This form is to be used ONLY by developments participating in the LIHTC program, which are providing temporary housing for Hurricane Katrina evacuees and is to be completed by owner/management.

Move-In Date: _____
(MM/DD/YYYY)

Move-Out Date: _____
(MM/DD/YYYY)
OR
Eligible Certification Date: _____
(MM/DD/YYYY)

PART I - DEVELOPMENT DATA

Property Name: _____ OHFA #: _____

BIN #: _____ County: _____ Unit Number: _____ # Bedrooms: _____

PART II. HOUSEHOLD INFORMATION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	Social Security or Alien Reg. No.
1			HEAD		
2					
3					
4					
5					
6					
7					
8					
9					
10					

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	\$	\$	\$	\$
Add totals from (A) through (D), above			TOTAL INCOME (E):	\$

PART IV – KATRINA AREA INFORMATION

Address: _____ Apt. #: _____

City: _____ State: _____ Zip Code: _____ County/Parish: _____

PART V. RENT

Tenant Paid Rent \$ _____

Utility Allowance \$ _____

Rent Assistance (i.e. vouchers, etc) \$ _____

Other non-optional charges \$ _____

Maximum Gross Rent Limit for this unit: \$ _____

GROSS RENT FOR UNIT:
 (Tenant paid rent plus Utility Allowance,
 Rental Assistance & other non-optional charges) \$ _____

HOUSEHOLD CERTIFICATION & SIGNATURES

I/we certify that I am a victim of flooding or storm damage as a result of Hurricane Katrina and as a result I require temporary housing. I/we understand that by providing this information, it will not influence my/our ability to be temporarily housed as a displaced household as a result of Hurricane Katrina. Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in.

_____ Signature	_____ (Date)	_____ Signature	_____ (Date)
_____ Signature	_____ (Date)	_____ Signature	_____ (Date)
_____ Signature	_____ (Date)	_____ Signature	_____ (Date)
_____ Signature	_____ (Date)	_____ Signature	_____ (Date)

TO BE COMPLETED BY OWNER/MANAGEMENT

1. Did displaced household provide documentation of displacement status? (Y/N) _____
2. If so, please provide FEMA registration number. _____
3. Lease Addendum termination date (not to exceed September 30, 2006) _____

SIGNATURE OF OWNER/REPRESENTATIVE

SIGNATURE OF OWNER/REPRESENTATIVE _____
DATE

Oklahoma Housing Finance Agency

Temporary Housing Lease Addendum as Authorized by IRS Notice 2005-69

Tenant:

Unit #:

Project Name:

IHDA Project #:

Termination of Tenancy:

The term of this Lease shall begin on _____, 2005 and shall terminate on _____, 2006

The maximum term of the Lease, as modified by this Addendum, shall be ____ months. However, in no event, regardless of the date of commencement of the Lease, shall the term of the tenancy extend beyond September 30, 2006, unless the parties enter into a lease conforming to the requirements of Section 42 of the Internal Revenue Code of 1986, as amended.

Due to temporary and emergency nature of this Lease, the Tenant may terminate the Lease prior to the end of the Lease period stated above. To terminate the Lease, the Tenant must give the Landlord 30-days written notice before vacating the unit. If the Tenant does not give the full 30-day notice, the Tenant shall be liable for rent up to the end of the 30 days for which notice was required or the date the unit is re-rented, whichever occurs first.

The Landlord shall not assess the Tenant any fee or charge, other than rent due through the 30-day notice period, if the Tenant exercises his or her right to terminate his or her tenancy under this Addendum. If the Tenant fails to vacate the unit at the end of the lease, this may result in an eviction action being filed against the Tenant.

IF THERE IS ANY CONFLICT BETWEEN THE TERMS OF THE LEASE AND THE TERMS OF THIS ADDENDUM, THE TERMS OF THIS ADDENDUM SHALL GOVERN.

Signature of Tenant	Printed Name of Tenant	Date Signed
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____

Signature of Landlord/Agent	Printed Name of Landlord/Agent	Date Signed
_____	_____	_____