



FEDERAL HOUSING FINANCE BOARD

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December 10, 2004

Mr. Raymond R. Christman
President
Federal Home Loan Bank of Atlanta
1475 Peachtree St. NW
Atlanta, GA 30309

NO-ACTION LETTER: Federal Home Loan Bank of Atlanta: Temporary Noncompliance by Rental Projects With Affordable Housing Program Income Targeting Requirements in Disaster Areas (2004-NAL-03)

Dear Mr. Christman:

This responds to your request dated October 19, 2004, for a No-Action Letter to allow vacant Affordable Housing Program (AHP)-assisted rental units in federally declared disaster areas to be leased for a period of up to 18 months following the date of the disaster declaration to households, regardless of income, who are victims of such disasters.

The Federal Home Loan Bank of Atlanta (Atlanta Bank) has received requests from two AHP-assisted rental project owners in two states to be allowed temporarily to rent their vacant AHP-assisted rental units to recent disaster victims, without regard to income eligibility, consistent with temporary income limit suspensions provided by the Internal Revenue Service (IRS) for rental properties financed with Low Income Housing Tax Credits (LIHTCs). The Atlanta Bank would like to allow these two project owners, as well as other AHP-assisted rental project owners, to take these actions to assist victims of the recent disasters, subject to such projects meeting certain conditions. These conditions are:

1. The displaced individual/household must have resided in a county designated from June 15, 2004 to October 18, 2004 for Individual Assistance by the Federal Emergency Management Agency (FEMA) as a result of a federal disaster.¹
2. The project owner must obtain written approval from the Atlanta Bank in order to obtain the temporary suspension of income limitations for the AHP project.

¹ FEMA authorizes specific assistance in designated Individual Assistance areas (specified counties and independent cities) for individuals that live or work in those areas. Authorized assistance includes: low-interest personal, farm and business loans; housing, including temporary lodging, rent, repairs and construction; medical care; transportation; tax relief; crisis counseling; legal counseling; and unemployment benefits.

3. The Atlanta Bank will specify the time period for suspension of income limitations, which will not exceed 18 months from the date of the federal disaster declaration.
4. Project owners must maintain and certify certain information, including the name and address of each displaced individual/household, and a statement, signed under penalties of perjury by the displaced individual/head of household, that the individual/household requires temporary housing because of damage to the individual's/household's home in an eligible county.
5. Project owners must maintain documentation of the date the individual/household began temporary occupancy and the date the occupancy ends.
6. Rents charged must not exceed the existing AHP rents for the units.
7. Existing AHP-eligible tenants cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.
8. AHP income-eligible applicants must be given priority for vacant units over displaced individuals who exceed AHP income limitations.

The AHP provisions of the Federal Home Loan Bank Act provide that at least 20 percent of the units in an AHP-assisted rental housing project must be occupied by and affordable for households with incomes at or below 50 percent of the area median income.² Pursuant to the Federal Housing Finance Board's (Finance Board) implementing regulation, projects compete under each Federal Home Loan Bank's application program to receive AHP subsidy under a scoring system administered by the Federal Home Loan Bank.³ The projects commit in their AHP applications to maintain certain income targeting limits, which may exceed the minimum statutory income targeting requirement, and receive scoring points based on the extent to which their income targeting commitments meet the Bank's targeting scoring criteria.⁴ The Atlanta Bank requests a No-Action Letter so that rental project owners may temporarily assist disaster victims whose incomes may result in the project temporarily failing to meet the income limits in its AHP application or the minimum statutory income targeting requirements.

The Atlanta Bank states that it has a large district that frequently experiences natural disasters caused by hurricanes and tropical storms. In 2004, the Atlanta Bank's district experienced an unprecedented number of hurricanes and tropical storms, which resulted in a total of 15 FEMA disaster declarations affecting the 7 states in the Atlanta Bank's district. Fourteen of these disaster areas were declared eligible for Individual Assistance in six of the seven states in the Atlanta Bank's district, as a result of tropical storms and hurricanes Bonnie, Charley, Frances, Gaston, Ivan and Jeanne, and severe storms, tornadoes and flooding in Virginia.

² See 12 U.S.C. § 1430(j)(2)(B) and (13).

³ See 12 C.F.R. § 951.6(b)(4)(iv).

⁴ See 12 C.F.R. § 951.6(b)(4)(iv)(C)(1).

Taking no action against the Atlanta Bank for violations of the AHP regulation that would result from temporary assistance to victims of these 2004 natural disasters would be consistent with the actions of the United States Department of Housing and Urban Development (HUD) and the IRS. These agencies, which regulate multifamily rental properties using various HUD assistance and LIHTCs, respectively, have announced temporary suspensions of income restrictions in specified disaster areas for projects temporarily renting vacant apartments to households that have been displaced by the recent natural disasters, subject to the projects meeting certain conditions.

In light of these circumstances, Finance Board staff will not take supervisory action or recommend to its Board of Directors that supervisory action be taken against the Atlanta Bank for any violations of the requirements of 12 C.F.R. part 951 resulting from noncompliance by an AHP-assisted rental project with AHP income targeting requirements, provided that the project meets all of the conditions listed above. This No-Action Letter is limited solely to rental projects that temporarily assist victims displaced as a result of the 2004 natural disasters specified in the following FEMA disaster declarations:

Declaration Number	Date in 2004	State	Title
1570	10/18	Virginia	Severe Storms and Flooding from the remnants of Hurricane Jeanne
1566	10/07	South Carolina	Tropical Storm Frances
1561	09/26	Florida	Hurricane Jeanne
1560	09/24	Georgia	Tropical Storm Frances
1554	09/18	Georgia	Hurricane Ivan
1553	09/18	North Carolina	Hurricane Ivan
1551	09/16	Florida	Hurricane Ivan
1549	09/15	Alabama	Hurricane Ivan
1547	09/15	South Carolina	Tropical Storm Gaston
1546	09/10	North Carolina	Tropical Storm Frances
1545	09/04	Florida	Hurricane Frances
1544	09/03	Virginia	Severe Storms, Flooding and Tornadoes Associated with Tropical Depression Gaston
1543	09/01	South Carolina	Hurricane Charley
1539	08/13	Florida	Hurricane Charley and Tropical Storm Bonnie
1525	06/15	Virginia	Severe Storms, Tornadoes, and Flooding

This No-Action Letter does not alter the Atlanta Bank's obligation otherwise to comply with all sections of 12 C.F.R. part 951 with respect to enforcing compliance of all other AHP-assisted rental projects with the requirements of the AHP regulation.

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This No-Action Letter expresses only the position of Finance Board staff and may be modified or superseded by the Board of Directors of the Finance Board. Because this No-Action Letter is based upon the Atlanta Bank's representations, any change in the facts or circumstances from those represented may warrant a staff recommendation that the Finance Board take appropriate supervisory action. If you have any questions, please contact Charles E. McLean, Jr., Associate Director, Office of Supervision, at mcleanc@fhfb.gov or (202) 408-2537.

Sincerely,

/s/ Stephen M. Cross

Stephen M. Cross
Director
Office of Supervision

cc: Charles E. McLean, Jr.
Mark J. Tenhundfeld