

NAHHP Update

HUD Releases Handbook Change 4 ... Then Delays Implementation

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On August 21, 2013, HUD issued Change 4 to Handbook 4350.3 REV-1, "Occupancy Requirements of Subsidized Multifamily Housing Programs."

It became effective August 7, 2013.

As of September 16, however, implementation of Change 4 had been delayed to at least October 1, 2013, pending clarifications to the student rule and the verification process.

"In the process of incorporating EIV as the preferred and mandated method of third-party verification, HUD as of now has totally changed the order of acceptability for verifying income by other means, including eliminating the requirement to wait two weeks before resorting to a Review of Documents," said Gwen Volk, Director of Affordable Housing Compliance for LBK Management Services.

"In fact, Review of Documents is no longer listed as an acceptable method of verification. Instead the documents the documents that used to be listed under 'Review of Documents' are now included as



number one under in 'third-party written verification' as being equally, if not more, acceptable than an arm's length verification directly from the employer."

"By the way, this change goes far beyond the scope of simply trying to incorporate existing changes into the handbook. Anything this significant should. One might have expected revisions of this significance to have been fully vetted with

the industry prior to changing the handbook," Volk said.

Still, owners and agents (O/As) would be wise to begin becoming acquainted with Change 4. Every chapter of the **HUD Handbook 4350.3, REV-1** other than Chapter 2 has been affected by **Change 4**, and Chapter 9 has been completely eliminated.

"There are changes in the Handbook that will affect your property's policies and proce-



NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION (NAHMA)—Protecting the Interests of Affordable Housing Property Managers and Owners

dures,” said Mary Ross, president and CEO of Ross Business Development, which offers training and consulting services for the affordable property management industry. “Specifically, all owner/agents should review Paragraph 5-13 for information about the new verification process,” she said, “although a majority of the changes were

previously announced via HUD Notices or Final Rules. However, while most changes were previously announced, there are additional clarifications that may drive changes to site processes.”

WHAT CHANGE 4 INCLUDES

Change 4 includes policy information on:

- Use of the Enterprise Income Verification (EIV) system
- Violence Against Women Act (VAWA) requirements
- Supplemental Information to Application for Federally Assisted Housing
- Rent Refinement of Income & Rent Determination Requirements in Public and Assisted Housing Programs

- Final Rule relating to admission of individuals subject to State lifetime sex offender registration

WHERE TO READ ABOUT THE CHANGES

By going to onto HUD’s website (www.hud.gov) and searching for 43503HSGH.pdf, you will see the latest version of the

NAHMA’s Concerns with Change 4

HUD’S POSSIBLE DELAYING OF IMPLEMENTATION OF CHANGE 4 may be to NAHMA members’ advantage, since it addresses several concerns identified by NAHMA. These concerns include that:

- There was no comment period before its release, which would have made it possible to identify policies that now need to be clarified and/or corrected as necessary before implementation.
- The policies are effective immediately, denying owners and agents (O/As) a reasonable implementation period to update policies, train staff and incorporate changes into the sites’ software. Change 4 does require software updates for O/As to comply with policy changes. For example, the requirement to include foster children and foster adults as family members is sound policy, but it requires a number of changes to certifications and TRACS.
- With respect to the Student Rule, in paragraph 3-13.A.2, the handbook added “and” after each criteria to determine eligibility for assistance under the student rule. Neither the statutory nor regulatory language includes all of these “ands,” which raises some questions about whether HUD intended to change its previous guidance on students’ eligibility for assistance. NAHMA is seeking further clarification on the intention of the handbook changes.
- Change 4 eliminated the previous Chapter 9 from Change 3, “Chapter 9, Required HUD-50059 and Subsidy Data Reporting,” without replacing relevant information elsewhere in Change 4. HUD’s Transmittal Notice states the previous Chapter 9 was removed due to the information already existing in the Multifamily Activity Transmission (MAT) Guide. However, the previous chapter 9 also included guidance on special claims, excess income, TRACS data and signature requirements, document retention requirements for 59and voucher files and un-cashed utility reimbursement checks. NAHMA is seeking confirmation on the references O/As should use for guidance on these topics.
- Further changes will be necessary to the Violence Against Women Act (VAWA) provisions in Change 4. While Change 4 incorporates the Section 8 requirements included in HUD Regulations 24 CFR 5 Subpart L—Protection for Victims of Domestic Violence, Dating Violence, or Stalking in Public and Section 8 Housing—VAWA expands the protections and the programs covered. The latest VAWA authorization (P.L. 113-4) covers many more housing programs than Project/Tenant Based Section 8 and public housing. These newly covered programs include: Section 202; Section 236; Section 811; LIHTC Properties; Home;and Section 221(d)(3).

However, the VAWA 2013 reauthorization did not amend the authorizing statutes for the newly covered HUD programs. NAHMA plans to submit comments to the HUD regarding the specific provisions required for these newly covered programs.

Among NAHMA’s concerns with the VAWA Reauthorization are that the law requires resident notification of VAWA rights at eviction; it is questionable whether the “emergency transfer” language, which requires federal agencies to develop model policies and procedures for emergency transfers for use by public housing agencies, owners and agents, is feasible; and O/As cannot “transfer” tenants between properties.

In addition to those listed above, Major Notices affecting the Handbook include:

- Limited English Proficiency (LEP), issued January 22, 2007, which can be found at www.justice.gov/crt/lep/guidance/HUD_guidance_Jan07.pdf.
- Current EIV Notice (HSG Notice 13-06), which can be found at <http://portal.hud.gov/huddoc/13-06hsgn.pdf>.
- “Implementation of Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System Amendments” (HSG Notice 10-08); Final Rule Issued April 16, 2010. This can be found at <http://portal.hud.gov/hudportal/documents/huddoc?id=10-08hsgn.pdf>.
- Notices explaining criminal screening requirements in detail – specifically related to sex offenders, including the original HSG Notice 09-11 Issued September 9, 2009, which can be found at <http://www.hud.gov/offices/adm/hudclips/notices/hsg/files/09-11hsgn.doc>. Also see the latest HSG Notice 12-11 Issued June 11, 2012 on this issue, at <http://portal.hud.gov/huddoc/12-28pihn12-11hsgn.pdf>.
- Notice explaining use of HUD Form 92006 including the latest HUD Notice 12-09 issued May 9, 2012, “Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing,” which can be found at <http://portal.hud.gov/huddoc/12-09hsgn12-22pihn.pdf>.
- Latest VAWA Final Rule 24 CFR Parts 5, 91, 880, et al. HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule Issued October 27, 2010. See <http://nhlp.org/files/10.27.10%20VAWA%20final%20rule.pdf>.

handbook, including the Transmittal Letter. This letter details all of the changes to the Handbook, chapter by chapter.

Changes within the actual manual are indicated by an asterisk (*) that appears both before and after the change. Note that there are no changes to Chapter 2 and that Chapter 9 has been replaced completely.

Many changes are additional clarifications on existing text, although there are also revisions. The Transmittal Letter is a guide that enables you to find the changes without having to search through the entire handbook. As noted before, however, at press time HUD indicated that there would be more clarifications to come.

Chapter 5, “**Determining Income and Calculating Rent,**” is one of the greatest concerns to NAHMA members. Among the changes and/or clarifications are:

■ **Under 5-5 Methods for Projecting and Calculating Annual Income,** is the following, including examples:

3. *Using EIV:

(a) The owner must not use the quarterly wage income reported on the EIV Income Report for calculating the tenant’s annual income from employment. The owner must confirm with the tenant that the information in EIV is correct. If the tenant agrees that the employment information reported in EIV is correct, the owner must:

- (1) Use the Income Report as third party verification of the tenant’s employment; and
- (2) Use tenant provided

documents for calculating the tenant’s annual income, e.g. 4-6 current, consecutive check stubs....

b. The owner must not use the quarterly unemployment compensation benefits reported on the EIV Income Report for calculating the tenant’s annual income from unemployment. The owner must confirm with the tenant that the unemployment information in EIV is correct. If the tenant agrees that he/she is receiving unemployment compensation benefits as reported in EIV, the owner must:

- (1) Use the Income Report as third party verification that the tenant is receiving unemployment; and
 - (2) Use tenant provided documents for calculating annual income, e.g. unemployment monetary benefit notice.
- c. If the tenant agrees with the social security benefit information on the EIV Income Report, the owner must use the EIV Income Report as third party verification, receiving social security benefits and also for calculating the tenant’s annual income....

d. If the tenant disputes the employment and income information in EIV, the owner must obtain third party verification from the source.*

■ **Under 5-6 Calculating Income—Elements of Annual Income,**...

d. For full-time students, who are 18 years of age or older *and* are dependents, a small amount of their

earned income will be counted. Count only earned income up to a maximum of \$480 per year for full-time students, age 18 or older, who are not the head of the family; spouse or co-head.* If the earned income is less than \$480 annually, count all of the income. If the earned income exceeds \$480 annually,* count \$480 and exclude the amount that exceeds \$480. Under Lump Sum Payments Counted as Income,...

3. *For Section 8 tenants only, any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum or in prospective monthly amounts are excluded from annual income.*

■ **Under 5-10 Calculating Adjusted Income...**

A. Dependent Deduction

1. A family receives a deduction of \$480 for each family member *(except foster children and foster adults)*...

It is not necessary for a member of the family to have legal custody of a dependent in order to receive the dependent deduction.

2. Some family members may never qualify as dependents regardless of age, disability, or student status.

Section 2:

a. The head of the family, the spouse, and the co-head may never qualify as dependents.

b. A foster child, *foster adult*, an unborn child, a child who has not yet joined the family or a live-in aide may never be counted as a dependent.

■ **Under 5-12, Verification Requirements...**

Owners must use the EIV Income Report for third party verification of a tenant’s employment and income at the time of recertification (annual and interim) and to assist in reducing administrative and subsidy payment errors. ...

4. *Household members must disclose and provide verification of their complete and accurate SSN except for those individuals who do not contend eligible immigration status, and tenants age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010. See Paragraphs 3-9 and 3-31 for SSN disclosure and verification requirements.*

■ **Under 5-13, Acceptable Verification Methods—**

*Acceptable methods of verification, in order of acceptability:

- 1) upfront-income verification (UIV) with use of EIV being mandatory and use of non-EIV UIV being optional;
- 2) third-party verification from source (written),
- 3) third-party verification from source (oral), and
- 4) family certification.*

There is a detailed description of **Third-Party Verification**, including listing what is mandatory and what is optional.

Clearly, it is incumbent upon O/As to review the Transmittal Letter and separate out the simple clarifications from the substantive edits and additions or deletions. **NU**

Telephone Consumer Protection Act

Dos and don'ts to simplify compliance

With Telephone Consumer Protection Act (TCPA) claims on the rise, now is a good time to review what's going on and how it affects businesses and organizations.

TCPA SNAPSHOT

The TCPA was enacted to protect consumers from aggressive telemarketers. TCPA provides a variety of restrictions. Most recent claims relate to promotional

IMPORTANT TCPA FACTS

- TCPA does not prohibit message notification services, ATDS, artificial or prerecorded voices, or automated calls and text messaging to residential and cell phones.
- FCC regulations exempt calls that don't include unsolicited advertising and calls that are made to those with whom the caller has an established business relationship.
- TCPA requires that prior written consent be received for ATDS and artificial or prere-

corded voice **telemarketing or advertising** calls to cellular and their cellular phones.

- **DO** use a notification service that provides recipients with opt-in and opt-out mechanisms.
- **DO** make sure that contracts for marketing campaigns with outside vendors expressly exempt you from potential TCPA violations.
- **DON'T** send promotional notifications, advertisements or any unsolicited messages that can be construed as advertising to anyone without first securing their written consent.

DO MAKE SURE THAT CONTRACTS for marketing campaigns with outside vendors expressly exempt you from potential TCPA violations.

marketing calls using automatic telephone dialing systems (ATDS, also called "robocalls"), artificial or prerecorded voices and calls to cell phones.

Two primary factors complicate TCPA compliance: ■ Broad interpretations of the law's provisions by the courts and the FCC, and ■ Technologies that have been developed since the law was enacted in 1991.

For example, the FCC interprets a "call" to include the sending of a text message. However text messaging is not specifically mentioned in the TCPA.

corded voice **telemarketing or advertising** calls to cellular and residential phones.

- TCPA requires that ATDS and artificial or prerecorded voice **telemarketing or advertising calls** have opt-out mechanisms.

BEST PRACTICES DOS AND DON'TS

- **DO** feel free to use a message notification service. It's an efficient, inexpensive and highly effective way to keep groups of all sizes informed.
- **DO** get written consent from those on your contact list allowing you to send messages using ATDS, artificial or prerecorded voice technologies, and

And lastly, **don't** be tempted to overreact to concerns about TCPA compliance. Provisions in the law make message notification services a good fit for businesses and organizations of all sizes. Periodically review your communication policies and practices and make sure your staff understands the dos and don'ts. **NU**

Nick Frantz is the National Sales Manager for Property Management Solutions at One Call Now. For more information regarding resident communication solutions, please visit www.onecallnow.com or call (877) 698-3262 to find out how our text, email and voice messages can work for your community.

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Top Ten Tips to Avoid an 8823

The management of a tax credit property is sometimes daunting. On top of collecting rent, getting units ready for occupancy and making sure that the property has good curb appeal, site staff has the onerous task of ensuring compliance with Section 42 of the Internal Revenue Code, which we commonly know as the Low Income Housing Tax Credit.

While the pitfalls are great, including loss of millions of dollars in tax credits, some things can be done to avoid non-compliance and loss of credits.

TIP #1: Recertify on time

If you are required to annually recertify your residents, make sure to do so on time. A unit that has not been recertified within 365 days of the previous certification is out of compliance. Units out of compliance on December 31st are not eligible for credits for the entire year. Having a number of units out of compliance could mean recapture or complete loss of credits.

TIP #2: Update UAs

Utility allowances must be updated annually. Any change in the UA that impacts the maximum rents must be implemented within 90 days.

TIP #3: Ensure that the amenities and programs that you promised to provide on

your tax credit application are actually in place

If you promised quarterly educational seminars for residents, provide documentation such as sign-in sheets to prove you are providing them.

TIP #4: Calculate rents properly

Make sure that if you round the rents to the nearest dollar that you round down. Even \$779.99 has to be rounded down to \$779.00.

Q: If you plan on utilizing only whole numbers, wouldn't this be rounded up to \$780?

A: No. If you round up to the \$780, you would be a penny over the income limit and the unit would not be qualified.

TIP #5: Maintain documentation of next available unit

If you have market-rate units, make sure that you are tracking the over 140%—Next Available Unit Rule. Be able to prove that you are renting the next available unit to a credit-eligible household.

TIP #6: Understand your accessibility requirements

Review your Land Use Restriction Agreement to ensure that you are providing the proper number of accessible units. Make sure your rental office complies with ADA requirements and common areas comply with the Fair Housing

Amendments Act.

TIP #7: Don't turn your property into a dormitory

Many housing credit properties are located near colleges. Make sure that you do not lease to a non-compliant student household.

TIP #8: Provide the proper documentation

A household may be qualified, but if you do not have proof through proper documentation, you are not in compliance.

Make sure that you have all needed documents.

TIP #9: Deal with the EIV Info

State agencies can't access any Employment Income Verification (EIV) information that you might have on a combo HUD/Tax Credit project.

Make sure the EIV information is in a separate file or that it is secured in a folder that can't be reviewed by the state agency.

TIP #10: No fires in December

After the first year of the credits, any unit down or off-line on December 31 can't claim credits for the entire year. Recapture of a third of previously earned credits is also at stake. Get units back on line by the end of the month. **NU**

Gregory Proctor is CEO of Windsor Compliance Services, Inc.

Welcome New Certificants!

NAHP Executive

- >> Evan Schmidt
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Barkan Mgmt. Co.
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Lawrence, MA
- >> Joseph Poirier
The Community Builders
Gloucester, MA
- >> Narciso Pires
The Community Builders
Holliston, MA



Finding Satisfaction in Turnarounds

NAME: Joshua Allen, Sr., NAHP-e

POSITION: President

MANAGEMENT COMPANY: J. Allen Management Co., Inc.

YEAR OF CERTIFICATION: 2005

Joshua Allen began his business in 1978 as a developer, building more than 300 apartments in his first venture in his home town of Beaumont, Texas. In 1981, he started managing his properties and later started managing others. Today, J. Allen Management manages around 4,000 apartments in Texas and one property in Louisiana.

These properties are mostly affordable, but the company also manages conventional units. Later, Josh opened a construction company which later helped him being awarded a large consulting contract with HUD. That contract required the company to perform management reviews and physical inspections on all properties handled by the Houston and New Orleans HUD offices.

J. Allen Management has specialized in managing troubled properties which have physical, financial and regulatory issues. The company has been successful in turning around these properties by refinancing and, in some

cases, doing major construction repairs without moving out tenants. These properties are performing well.

“We enjoy what we do as a company,” Allen said. “It is a challenge but very satisfying to see these properties back on line, fully occupied, in good physical condition and operating well financially.”

J. Allen Management by now has done about 25 or 30 turnarounds and has been successful in keeping residents in a properties undergoing renovation.

“Change is alarming, particularly for the elderly,” Allen said. “They get scared when they have to move.”

Allen’s senior vice-presi-

dent, Kathy Barrilleaux, is involved in AHMA East Texas and Allen has been very involved with the local affiliates of the National Apartment Association. He’s serves on the board of the Houston Apartment Association and was board president of the Texas Apartment Association from June 2007 to May 2008.

After focusing on property management for a time, the company is working on a 40-year-old property, utilizing tax credits.

“At our company, we pride ourselves on having good properties, with safe and sanitary housing for all our residents,” Allen said. **NU**

PROTECTING THE INTERESTS OF AFFORDABLE HOUSING PROPERTY MANAGERS AND OWNERS

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