

CERTIFIED PROFESSIONAL OF OCCUPANCY

A Guide for Managers and Owners

A comprehensive workbook and
reference manual for the Managers and
Owners of Affordable Housing
— Seventh Edition
Updated November, 2013

DEVELOPED by the National Affordable Housing Management Association
in cooperation with the Affordable Housing Management Associations

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**NAHMA CPO COURSE MANUAL
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INTRODUCTION

Congress creates housing programs by passing legislation, which becomes written, in the form of statutes. The federal Department of Housing and Urban Development (HUD) is the administrative agency responsible for implementing the requirements regarding most Housing programs contained in federal statutes. As such, HUD issues regulations that provide structure, and specific substantive rules to carry out the requirements of the general statutory provisions. HUD also has a system for communicating to HUD staff and program participants how the agency interprets these statutes and regulations, as well as general guidance on how to administer the housing programs and other administrative information. This is called HUD's Directives System. There are two parts to this system: Notices and Handbooks.

A. NOTICES

HUD issues Notices to its staff and program participants (owners) to inform them of a temporary change in a policy or rule. HUD gives Notices expiration dates that expire automatically if they are not renewed.

B. HANDBOOKS

Handbooks convey important information that is of a more permanent nature than Notices. Handbooks are a key source for understanding what HUD believes its regulations and the statutes that cover the housing programs mean. The Handbooks contain mandatory rules that HUD requires program participants to follow, as well as advisory guidance and stating what program participants are permitted to do. If a dispute about housing policy ends up in court, judges often give a lot of weight to what HUD says in its Handbooks. For these reasons it is very important that owners of assisted apartments understand the information contained in the Handbooks that apply to their respective housing units.

1. THE LANGUAGE HUD USES IN THE HANDBOOKS

It is important to pay attention to the language that HUD uses in the Handbooks. HUD uses words such as "*must*," "*should*," and "*may*" to let program participants know if you have to follow a policy (must), whether HUD advises you to follow a policy (should) and whether you are permitted to do something (may).

2. HOW HUD ISSUES A CHANGE TO THE HANDBOOKS

When HUD issues a change to a Handbook, it is accompanied by a transmittal letter that explains the content of the change, filing instructions that tell you which pages of the Handbooks are to be replaced in accordance with the change, and an effective date for the material covered in the change.

In addition to changes in its Handbooks, HUD sometimes issues "*supplements*" and "*revisions*." Supplements are issued, by HUD, to clarify for its staff material contained in the Handbooks. Supplements do not contain information that conflict with the Handbooks. Every once in a while, HUD replaces an entire Handbook with another one. This is called a "*revision*", and is what occurred with the 4350.3.

3. HANDBOOK 4350.3/4350.3 REV-1

Handbook 4350.3 is a "*rule book*" on the occupancy policies and procedures governing the following subsidized multifamily programs:

- a) Section 221(d)(3) Below Market Interest Rate (BMIR)
- b) Rent Supplements
- c) Section 236 Interest Reduction
- d) Rental Assistance Program (RAP)
- e) Project-based Section 8 Programs
- f) Section 202 Projects with Project Assistance Contracts (PACS)
- g) Section 202 Projects with Project Rental Assistance Contracts (PRACS)
- h) Section 202 without Assistance (Income Limits Only)
- i) Section 811 with Project Rental Assistance Contracts (PRACS)

When the HUD Handbook, 4350.3, was first published in November 1981, it took a big step toward making the occupancy procedures and requirements the same for the various HUD-assisted housing programs it covers. Since that time, both the requirements for managing the housing and the 4350.3 have become much more complicated. Moreover, the trend in recent years has been moving away from standardization of occupancy requirements across different housing programs, returning instead to the program-specific requirements of the past. Because the laws governing the management of HUD-assisted housing are changed so frequently, it has become a very difficult task for HUD to keep the 4350.3 up-to-date. We are fortunate because HUD took the opportunity to conduct a major re-write of this Handbook (11/2013). It is up to date, and well organized. Each Chapter contains a list of relevant citations to applicable laws, and describes the key requirements and procedures relevant to that topic. The handbook provides examples, figures, exhibits, and a glossary, which contains definitions of key technical terms used in the 4350.3, which is now technically called the 4350.3 Rev-1. As stated earlier, because the industry refers to the **NEW** handbook simply as the 4350.3, we will as well.

4. APPROACH AND ORGANIZATION OF THIS TRAINING MANUAL

This Training Manual is designed to be used in conjunction with the 4350.3, HUD Regulations and Notices, **not** in place of them. The Manual is designed to get you into the 4350.3. Under each chapter heading, we state all of the Paragraphs, Exhibits, and Forms, which will be discussed in the chapter. In addition, we reference the specific Paragraphs, Sections, and Exhibits in the 4350.3 discussed in each section of the Manual in the left-hand margin. As much as possible, we have tried to avoid either quoting lengthy passages from the 4350.3 verbatim, or paraphrasing at length. Rather, we have attempted to provide a framework for organizing, understanding and interpreting the many policy areas covered in the 4350.3. **There is no substitute for reading the 4350.3, and this Manual does not attempt to bypass the 4350.3.** Nor is there any substitute for you reading the Statutes and Regulations the 4350.3 references. See Figure 1-2 for a summary of Statutes and Regulations for key HUD Multifamily Housing Programs. If you haven't already obtained and read those Statutes and Regulations that apply to the housing program(s) you manage, we encourage you to do so.

a. **Why The 4350.3 Contains 9 Chapters And This Manual Has 24 Chapters:**

The highly technical information of the type presented in the 4350.3 is much more easily absorbed and learned when it is presented in very topic-specific, bite-sized amounts. Therefore, we have elected to breakdown the information over a number of chapters in this Manual.

Each one of these chapters closes with a mini quiz to test your knowledge of the material that has just been discussed.

b. **Dealing With Some of The Issues Contained in Handbook 4350.3**

This Handbook has been updated over time in a manner that includes numerous important topics. Although this is wonderful, we have been left with limited time to squeeze into the training all of the most current and up-to-date requirements for the assisted housing programs covered by the 4350.3. We have therefore chosen to discuss briefly issues relating to the Citizenship rule, the Tenant Rental Assistance Certification System (TRACS), Special Claims, 236 Excess Income and the Enterprise Income Verification (EIV) system. Simply put, a thorough dealing of any of these topics would take up all of our time. In addition, Change 4 to the Handbook removed **Chapter 9: REQUIRED HUD-50059, HUD-50059-A AND SUBSIDY DATA REPORTING** in its entirety. **Section 1: Tenant Rental Assistance Certification System (TRACS)** described the requirements and procedures for subsidy tracking. **Section 2: Payments** presented the key payments that HUD provides to owners and the requirements for these payments. Please note that the Appendices that corresponded to the old Chapter 9 haven't been removed. We will not be covering these appendices. We strongly recommend that you review the HUD Special Claims Guidebook, as well as the MAT Guidebook that provides excellent detail on the TRACS System, Special Claims processing and the 50059 itself.

5. 504 AND FAIR HOUSING

If it can be said there is a common thread running through the various HUD-assisted housing programs covered by the 4350.3, it is probably the anti-discrimination requirements addressed in Section 504 of the Rehabilitation Act (504) and Fair Housing Amendments Act (FHAA). 504 prohibits discrimination on the basis of handicap or disability in assisted housing. The FHAA prohibits discrimination on the basis of race, color, sex, national origin, handicap, religion, and familial status in both privately owned and assisted housing. It is essential to realize that 504 and the FHAA have ramifications on virtually every aspect of the way you manage your housing. It is a common and dangerous (in the legal sense) mistake to compartmentalize 504 and the FHAA and to think, *"Gee, in addition to everything else involved in managing this housing, I have to comply with 504 and FHAA."* It is more accurate to think of 504 and the FHAA compliance **in the context of all the work that you perform** in the course of managing your HUD-assisted housing. Thus, if you think, *"I have to comply with 504/FHAA in my marketing, I have to comply with 504/FHAA in the way I take and process applications, I have to comply with 504/FHAA in the way I screen applicants . . ."* you will be on the right track.

C. CONCLUSION

We wish you the best of luck in the training program, in taking the examination, and most importantly, in your job. We hope this program sheds some light on areas you have not understood in the past and offers a solid framework for learning and dealing with the inevitable changes to come. After all, that's the nature of the business we're in.

Figure 1-2: Regulations and *Authorities* for Key HUD Multifamily Housing Programs

A. Requirements Applicable Across All Programs		
Requirement	Regulation	Statute
General HUD Program Requirements	24 CFR, part 5	Various statutes
Title VI, Subtitle D of the Housing and Community Development Act of 1992		42 U.S.C. 13641
Fair Housing Act (Title VIII of the Civil Rights Act of 1968)	24 CFR, part 100 24 CFR, part 108	42 U.S.C. 3601 et seq.
Title VI of the Civil Rights Act of 1964	24 CFR, part 1	42 U.S.C. 2000d et seq.
Section 504 of the Rehabilitation Act of 1973	24 CFR, part 8	29 U.S.C. 794
Nondiscrimination and Equal Opportunity in Housing	*24 CFR, part 107*	*Executive Order 11063*
Collection of Data	*24 CFR, part 121*	*Fair Housing Act*
Economic Opportunities for Low and Very Low Income Persons	*24 CFR, part 135*	*12.U.S.C. 1701u*
Age Discrimination Act of 1975	24 CFR, part 146	42 U.S.C. 6101 et seq.
Tenant Participation Regulations	24 CFR, part 245	12 U.S.C. 1715z-1b

Figure 1-2: Regulations and *Authorities* for Key HUD Multifamily Housing Programs

B. Regulations and Statutes by Programs		
Program	Regulation	Statute
Section 221(d)(3) BMIR	24 CFR, part 221	12 U.S.C. 1715(l); Section 221(d)(5) of the National Housing Act
Section 236	24 CFR, part 236	12 U.S.C. 1715z-1; Section 236 of the National Housing Act
Section 202 – Direct Loan	24 CFR part 891, subpart E	12 U.S.C. 1701(q); Section 202 of the Housing Act of 1959
Section 202 – Capital Advance	24 CFR part 891, subpart B	12 U.S.C. 1701(q); Section 202 of the Housing Act of 1959 as amended by Section 801 of the Cranston-Gonzales National Affordable Housing Act
Section 811 – Capital Advance	24 CFR part 891, subpart C	42 U.S.C. 8013; Section 811 of the Cranston-Gonzales National Affordable Housing Act
Section 202/811 – Mixed Finance	*24 CFR part 891, subpart F*	*12 U.S.C. 1701(q); Section 202 of the Housing Act of 1959 as amended by Section 801 of the Cranston-Gonzales National Affordable Housing Act 42 U.S.C. 8013; Section 811 of the Cranston-Gonzales National Affordable Housing Act*
Section 8 New Construction	24 CFR, part 880	42 U.S.C. 1437(f)(b); Section 8(b) of the United States Housing Act of 1937, as in effect before October 1, 1983.
Section 8 Substantial Rehab	24 CFR, part 881	42 U.S.C. 1437(f)(b); Section 8(b) of the United States Housing Act of 1937, as in effect before October 1, 1983.
State Agency Section 8	24 CFR, part 883	42 U.S.C. 1437(f)(b); Section 8(b) of the United States Housing Act of 1937.
RHS Section 515/8	24 CFR, part 884	42 U.S.C. 1437(f)(b); Section 8(b) of the United States Housing Act of 1937.
Section 8 LMSA	24 CFR part 886, subpart A	Not applicable.
Section 8 PDSA	24 CFR part 886, subpart C	42 U.S.C. 1437(f)(b); Section 8(b) of the United States Housing Act of 1937.
Section 202/8	24 CFR part 891, subpart E	42 U.S.C. 1437(f)(g); Section 8(g) of the United States Housing Act of 1937
PAC/PRAC	24 CFR, part 891	42 U.S.C. 8013(d)(2); Section 811 of the Cranston-Gonzales National Affordable Housing Act

Figure 1-2: Regulations and *Authorities* for Key HUD Multifamily Housing Programs

RAP	24 CFR part 236, subpart D	12 U.S.C. 1715z-1; Section 236 of the National Housing Act
Rent Supplement	24 CFR, part 215 (currently expired, but still in effect for existing contracts per 24 CFR 200.1302)	12 U.S.C. 1701(s); Section 101 of the Housing and Urban Development Act of 1965

Figure 3-3: Income Limits by Program

Subsidy	Type of Income Limit
Section 8 (pre-1981)	Low, very low, and extremely low-income limit
Section 8 (post-1981)	Very low and extremely low-income limit
Section 236	Low-income limit
Rent Supplement	Low-income limit
Rental Assistance Payment (RAP)	Low-income limit
Section 202 without assistance	Low-income limit See paragraph 3-6 D 3 for exceptions
Section 202 with Section 8 Assistance	Low, very low, and extremely low-income limit
Section 202 with Rent Supplement	Low-income limit
Section 202 PACs	Low-income limit
Section 202/811 PRACs, <u>except</u> those funded in FY1995	Very low-income limit
Section 202/811 PRACs funded in FY 1995	Low-income limit
Section 221(d)(3) BMIR	BMIR income limit

TRAINING GROUND RULES and APPROACH

1. Use of Training Manual and HUD Handbook 4350.3 Rev-1.

In this course, we will present information and concepts that require reference to the Course Manual as well as the HUD Handbook 4350.3 Rev 1. We reference the Handbook both as 4350 Rev-1, and 4350.3. The reason for this is the industry refers to the Handbook mainly as the 4350.3. Policy and procedure language is essential to occupancy standards; therefore, there will be times during the course when we will study the language.

2. Be prepared to work.

We will do our best to make the course interesting and informative, but the nature of the program is such that some serious study of the concepts on your part is required. Proper attention to details makes compliance possible. At key intervals in the chapter discussions, be prepared to follow along in the Manual and the 4350.3 Rev-1.

3. Straight forward approach to the presentation.

Much of the material, especially early in the program, is of a technical nature based on regulations. This type of information does not lend itself to a dynamic trainer approach. We will however deliver the materials in a straightforward and innovative style to make the topic under discussion relate to the assisted housing environment.

4. Ask questions.

Try to focus your questions to the topics at hand. At times, the trainer will defer an answer until the topic comes up in the agenda. If we don't address your question then, remind us. If we do not have an answer to a question we will tell you.

5. During this course we will not argue the philosophy, or social issues, behind the enactment of the laws governing HUD occupancy regulations. What is on the books is what we must work with. The laws can only be changed by going back to Congress.

6. You may use lap top computers during the course, but not during the exam.

7. We will not make project specific determinations on company or property procedures and policies.

8. This Course Manual is cross referenced with the HUD Handbook 4350.3 Rev-1 and both resources will be used during the training session. Sometimes the reference in the left hand margin will be to the 4350.3, rather than the 4350.3 Rev-1. Regardless of which reference is used we are referring to the **NEW** handbook.
9. All participants that desire to become a Certified Professional of Occupancy (CPO) must attend all three days of the seminar and receive a passing grade of **70%** or higher to receive this designation. All tests will be processed through the National Affordable Housing Management Association in Alexandria, Virginia. Certificates of completion and lapel pins will be mailed to participants who successfully complete the course, and a letter of explanation will be sent to those who need further instruction.

NAHMA CPO COURSE AGENDA

DAY 1: CPO PROGRAM

- 7:30 **Registration:** receipt of course materials
- 8:15 **Instructor Welcome and Course Overview:** Introduction, Disclaimer, Training Ground Rules, Review Agenda and Topics for the next two days, explain homework expectations and format of examination.
- 8:30 **HUD Handbook 4350.3 and the Course Manual:** the 4350.3; its organization; Handbook language; approach and organization of the Course Manual; use of the 4350.3 during training.
- 8:50 **Chapter 1: Civil Rights and Nondiscrimination Requirements:** Nondiscrimination Requirements under the Fair Housing Act; Accessibility Requirements; Policies and Procedures to Ensure Nondiscrimination and Promote Accessibility; Physical Accessibility; Reasonable Accommodations; Additional Fair Housing Requirements. *Review of 504/Fair Housing Mini-Quiz.*
- 10:00 **Break** (15 minutes)
- 10:15 **Chapter 2: Overview of Eligibility Criteria:** Overview of eligibility criteria; Social security number certification requirement; Consent for release of income information; Restriction on assistance to noncitizens. *Review of Eligibility Mini-Quiz.*
- 10:40 **Chapter 3: Income Eligibility and Admitting Over-Income Applicants:** Programmatic income limits; limits on admission of low-income tenants to Section 8 properties; Program-specific limits on admissions of ineligible applicants. *Review Income Eligibility Mini-Quiz.*
- 11:15 **Chapter 4: Project Eligibility:** Eligibility of remaining family member; Definitions of Elderly and Disability used to determine eligibility; Eligibility for Admission to Elderly Projects. *Review Project Eligibility Mini-Quiz.*
- 11:45 **Chapter 5: Occupancy Standards:** Factors stated by HUD and general occupancy guidelines; 504 and Fair Housing issues; accessible units and subsequent transfers. *Review Occupancy Standards Mini-Quiz.*
- 12:00 **Lunch** (On Your Own)

- 12:45 **Chapter 6: Tenant Selection Plan and Screening for Suitability:**
Tenant Selection plan requirements; permitted screening criteria; Admission and eviction criteria for drug related and violent criminal activity; Prohibited screening criteria. *Review Tenant Selection and Screening Mini-Quiz.*
- 1:30 **Chapter 7: Applications and Admission Preferences:**
Review process of accepting applications; Review of various types of allowable and required preferences; Methods of weighting preferences; Verifying and updating preferences. *Review Applications & Admission Preferences Mini-Quiz.*
- 2:00 **Break** (15 minutes)
- 2:15 **Chapter 8: Income Targeting Requirements:**
Review of HUD's Income Targeting requirements in the Section 8 subsidy program; Methods of applying income targeting requirements; policy requirements for implementation of targeting requirements. *Review Income Targeting Mini-Quiz.*
- 2:50 **Chapter 9: Rejecting Applicants:**
Processing rejections; written notice requirements; Appeal requests and meetings; Final management written response. *Review Rejecting Applicants Mini-Quiz.*
- 3:15 **Chapter 10: Wait List Management:**
Affirmative Fair Housing Marketing Plan; Creating and Maintaining Wait Lists; Placing Applicants with Disabilities; Documenting Changes to the Wait List; Updating the Wait List; Removing and Reinstating Applications on the Wait List; Selecting Applicants from the Wait List. *Review Wait List Management Mini-Quiz.*
- 4:00 **Break** (15 minutes)
- 4:15 **Chapter 11: Selecting Tenant from the Wait List;**
Applicant Interviews; Verification of Preferences; Applying Income Targeting; Verifying Need for Accessible Units; Requests for Reasonable Accommodations; Denial of Assistance to Noncitizens. *Review Selecting Tenants Mini-Quiz.*
- 4:40 **Chapter 12: Calculation of Tenant Rent:**
Overview of rent computation process; Explanation of rent computation worksheet.
- 5:15 **Review of Homework:** Assignment and Adjourn Day 1. There is an optional Annual Recertification Homework Assignment for use at your discretion. Hand out the exercise at this time if you plan to use it.

5:30 – 6:30 **Review Session:** Optional for participants; review of the day using the 4350.3 as the guide.

DAY 2: CPO PROGRAM

8:00 **Review of Homework Assignment**

8:20 **Chapter 13: Enterprise Income Verification (EIV):** Review the EIV system and it's mandatory use, the source data, schedule of reports , penalties for non-use, security training and safeguarding of the EIV data. EIV Use: *Mini-Quiz*.

10:00 **Break** (15 minutes)

10:15 **Chapter 14: Assets and Asset Income:** Asset Inclusions and Exclusions; Determining Cash Value of An Asset Divested Assets; Imputed Income from Assets. *Review of Assets Mini-Quiz*.

10:30 **Chapter 15: Annual Income:** Annualizing Income Amounts; Income Inclusions and Exclusions. Projecting Annual Income Amounts.

Review Annual Income Mini-Quiz.

11:15 **Chapter 16: Allowances and Adjusted Income:** Review of five allowances; formulas for each allowance; Calculations for each allowance as needed; computation of adjusted income. *Review Allowances Mini-Quiz*.

12:30 **Lunch** (On Your Own)

1:15 **Chapter 17: Verification:** Acceptable Verification Sources and Methods; SS and SSI Matching; Terms of Verifications; Documenting Verifications; Refusal to Sign Verifications. *Review Verifications Mini-Quiz*.

2:00 **Chapter 18: The Lease:** Lease requirements; Lease Term; Attachments to the Lease; Lead-Based Paint Disclosure Form; House Rules

2:30 **Break** (15 minutes)

2:45 **Chapter 18: The Lease: (continued)** Pet Rules; Modifying the Lease. *Review Lease Mini-Quiz*.

3:15 **Chapter 19: Security Deposits and Other Charges:** Collection of Security deposit; Deposits when resident transfers; Interest Earned on Deposit; Refunding and use of Deposit. Charges at Initial Occupancy;

Charges for Late Payment of Rent; Pet Deposits; Other Charges during occupancy *Review Security Deposit and Charges in Addition to Rent Mini-Quiz.*

3:30 Chapter 20: The Leasing Process:

Briefing with new tenants; Form of payment; Unit inspections; Required Documents for residents. *Review Leasing Process Mini-Quiz.*

4:00 Chapter 21: Annual Recertifications:

Timing of Annual Recertifications; Overview of Process; Notices to tenants;

4:30 Break (15 minutes)

4:45 Review of Homework Assignment: (optional) and adjourn Day 2.

5:30 – 6:30 Review Session: Optional; review of Day 2 material and possibility of another rent computation case study.

DAY 3: CPO PROGRAM

8:00 Review of Material and/or homework from Day 2. Pep talk with class about examination.

8:15 Chapter 21: Annual Recertifications: Effective Dates of Changes in Assistance, TTP and Tenant Rent. *Review Annual Recertifications Mini-Quiz*

9:00 Chapter 22: Interim Adjustments:

Owner Responsibilities; Processing Interim Adjustments; Effective Dates of Rent Increases and Decreases; Unit Transfers. *Review Interim Adjustments Mini-Quiz.*

9:45 Chapter 23: Termination of Assistance:

Grounds for Terminating Assistance; Procedures for Terminating or reinstating assistance; Terminating Assistance related to citizenship status. *Review Termination of Assistance Mini-Quiz.*

10:15 Chapter 24: Termination of Tenancy and Fraud:

Material Noncompliance with the Lease; Drug Abuse and Other Criminal Activity; State Landlord Law; Other Good Cause; Procedures for Addressing Fraud; Reimbursement to HUD or Tenant. *Review Termination of Tenancy and Fraud Mini-Quiz.*

11:45 Final Review of Course Material: Day 1, 2, and late morning of Day 3.

1:00 Students are given a voucher to take the CPO exam within the next 3 weeks from their property, management company, or home office. This is a non-proctored exam.

ACKNOWLEDGMENTS

SEVENTH EDITION

This Manual is part and parcel of the National Affordable Housing Management Association's (NAHMA) course on the Department of Housing and Urban Development's 4350.3 Occupancy Handbook. The course is designed to educate site managers about the contents of the 4350.3 and to facilitate their professional development. As part of NAHMA's standardized curriculum, it was developed to meet the basic requirements for its professional certification, the National Affordable Housing Professional (NAHP).

The author of the original version of NAHMA's training manual was written by Debbie Piltch (Piltch Associates, Inc.) and John Miller.

NAHMA thanks the numerous individuals who over the years have assisted in updating and editing the CPO course materials to reflect Changes 1-4 to the 4350.3 Rev. 1. The most recent version of NAHMA's CPO course was updated by Doreen Donovan, Sue Johnson, Anita Moseman and Debbie Piltch.

Debbie Piltch is an attorney who specializes in housing and discrimination issues, and serves as a certified trainer for NAHMA's CPO and Fair Housing Courses, as well as a national trainer on tax credit compliance. Her company, Piltch Associates, Inc., consults with agencies and companies on compliance issues and designs and implements training programs. Debbie is one of the original authors of NAHMA's Certified Professional of Occupancy (CPO) course, and is the current Co-Chair of NAHMA's Training and Education committee. In addition, she currently serves as the Director of Compliance for Maloney Properties, Inc.

Susan Johnson is a property management consultant who specializes in training and technical assistance for assisted and public housing. She is a certified trainer for NAHMA's CPO Course, and has had her own consulting business, the Success Group for twenty-eight years.

Anita Moseman is Vice President and Broker of Record for Monfric Realty, Inc., a property management and consulting firm based in Grand Junction, Colorado. She also serves as Vice President of Monfric, Inc. based in San Diego, California. Anita holds a Montana Real Estate Broker License in addition to her Colorado Broker's license, and is a Partner in HCP (Housing Credit Productions), a Tax Credit Consulting and Training Group based in Orange County, California. She has been in the Affordable Housing Industry for over 30 years and was one of the first two trainers to be certified to train NAHMA's CPO course.

Doreen M. Donovan, NAHP®, SCHM, CPM®, HCCP, is the V. P. of Administration and Quality Assurance for Peabody Properties. Primary responsibilities are to communicate federal regulatory changes, establish company policies and procedures, training, education, software support and staff development. Doreen has over 30 years of real estate experience in multifamily asset and property management. Currently, Co-Chairs the Training and Education Committee for

NAHMA and is on the NEAHMA Board and previously worked with DHCD on matters relating to public housing changes.

DISCLAIMER

The materials contained in this manual are comprehensive, but not exhaustive of the evolving issues surrounding occupancy regulations in assisted/affordable rental housing. Due to the complexity of these issues, we recommend that housing providers keep abreast of the laws governing this area. Court decisions are constantly defining and refining, the framework within which a provider must operate.

USERS OF THIS MANUAL SHOULD UNDERSTAND THAT THE INFORMATION PROVIDED HEREIN, AND AT THE TRAINING SESSION, IS NOT A SUBSTITUTE FOR LEGAL ADVICE. THE MANUAL SHOULD NOT BE RELIED UPON AS A SOURCE OF LEGAL ADVICE OR AS A FINAL AUTHORITY WITH RESPECT TO ANY INDIVIDUAL CIRCUMSTANCE.

PROVIDERS MUST SEEK COMPETENT LEGAL ADVICE IN DEVELOPING SPECIFIC OCCUPANCY POLICIES, PROCEDURES, AND PRACTICES. PLEASE HAVE COUNSEL REVIEW ANY DOCUMENTS PRIOR TO USE.

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CHAPTER 1

CIVIL RIGHTS AND NONDISCRIMINATION 504 AND FAIR HOUSING NON-DISCRIMINATION AGAINST HANDICAPPED/DISABLED

Federal civil rights laws affecting HUD-subsidized multifamily properties are discussed in Chapter 2 of the 4350.3 REV-1, including Exhibit 2-1 Distribution of Accessible Units, Exhibit 2-2, Examples of Requests for Auxiliary Aids and Reasonable Accommodations by Persons with Disabilities, Exhibit 2-3, Sample Notification of Nondiscrimination on the Basis of Disability Status, Exhibit 2-4 Suggested Checklist to Determine Whether a Communication System Is an Equally Effective Alternative to the TTY, Exhibit 2-5 Examples of Fundamental Alterations, and Exhibit 2-6, Examples of Undue Financial and Administrative Burden, also see the Glossary for Key Terms.

4350.3 REV-1
REV-1
Paragraph 2-2 -
2-4 (pgs. 2-2 –
2-4)

1. INTRODUCTION TO THE KEY REGULATIONS AND STATUTES

Chapter 2 of the 4350.3 REV-1 covers Federal civil rights and non-discrimination requirements regarding fair housing and accessibility that apply to Federally subsidized multi-family housing throughout the occupancy cycle. The handbook specifies that owners must be familiar with all applicable statutes, regulations implementing these civil rights laws, and applicable HUD Notices explaining those requirements, and follow the most stringent applicable law. The handbook also makes clear that owners are responsible for complying with any applicable state civil rights laws or local ordinances.

Chapter 2 discusses the following statutes that contain civil rights and non-discrimination requirements: The Fair Housing Act of 1968, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973. These laws prohibit discrimination against applicants or tenants based on one or more of the following classifications: race, color, religion sex, national origin, familial status, disability and age. However, much of chapter 2 focuses on discrimination against persons with disabilities. As such, this chapter will do the same following a brief overview of each applicable law. It is essential to recognize that Civil Rights and Non Discrimination cannot be separated from the rest of the work involved with management of HUD-assisted housing, but are instead inextricably entwined into all the work you do, from advertising to application intake to lease execution to lease enforcement to recertification and eviction. This is reflected in the fact that the 4350.3 REV-1 discusses Civil Rights and Non Discrimination Requirements in almost every chapter of the Handbook. In such instances, we will not duplicate the discussion in this chapter, but rather cover the topic in corresponding chapters of this training manual.

4350.3 REV-1
Paragraph 2-2
(pg. 2-2)

A. KEY TERMS

It should be added that Civil Rights and Nondiscrimination Statutes and Regulations **employ a jargon and set of definitions all their own, which are included in the glossary of the 4350.3 REV-1. You will have to familiarize yourself with those definitions if you want to get up to speed on the applicable laws.** One important point is that the terms “disability” and “persons with disabilities” are used in two contexts--for civil rights protections and for program eligibility purposes. Remember, when used in the context of protection from discrimination or improving the accessibility of housing, the civil rights definition applies--not the eligibility definition for multifamily subsidized housing.

4350.3 REV-1
Paragraph 2-2
(pg. 2-2)

B. OVERVIEW OF THE KEY FEDERAL LAWS THAT PROHIBIT DISCRIMINATION

The handbook summarizes key provisions contained in the applicable federal laws. Rather than repeat the Handbook’s summary, and provide extensive examples of each, we have chosen to highlight key provisions.

4350.3 REV-1
Paragraph 2-5
(pg. 2-4) &
Paragraphs
2-13 - 2-20 (pgs.
2-11 - 2-15)

1) THE FAIR HOUSING ACT

This law prohibits discrimination on the basis of race, color, religion, sex, national origin, familial status and disability and applies to all units subject to the 4350.3 REV-1. The handbook summarizes the types of actions an owner (and his/her agent) may not take based on protected status, and provides numerous examples of discriminatory conduct. The handbook also includes a few additional points in relation to this law:

- Although you must treat all applicants and tenants equally, the law sometimes requires owners to treat applicants and tenants differently to enable them to have equal access to and enjoyment of housing. The Act and its regulations require owners to provide “reasonable accommodations” to persons with disabilities. This includes making changes in rules policies and procedures, and allowing tenants to make structural modifications to their units and the common areas provided certain standards are followed.
- This law contains specific accessibility requirements that apply to the design and construction of new multifamily housing.

- HUD has an obligation to administer its programs in a manner that affirmatively furthers fair housing in accordance with this law. One way of accomplishing this is through its regulations for Affirmative Fair Housing Marketing. This requirement is discussed in Chapter 10.
- Owners must display the Fair Housing Poster.

2) TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

This law prohibits recipients of federal financial assistance from discriminating on the basis of race, color or national origin. The Handbook emphasizes a couple of points:

- Recipients have an affirmative obligation to take reasonable steps to remove or overcome any discriminatory practice and to overcome the effects of conditions that result in limiting participation by persons of a particular race, color or national origin.
- Title VI regulations require owners to maintain racial and ethnic data showing the extent to which members of minority groups benefit from HUD subsidized housing.

3) AGE DISCRIMINATION ACT OF 1975

The law prohibits discrimination based on age in federally assisted and funded programs, except in limited circumstances. For example, you can limit eligibility based on age if you are permitted by statute for that program. Likewise, you can't screen for age unless it is necessary to determine eligibility or for the operation of the housing program.

4) SECTION 504 OF THE REHABILITATION ACT

This law prohibits discrimination on the basis of disability in federally assisted programs and activities, including the area of employment, and applies to all of the programs covered by the 4350.3 REV-1. This law overlaps with the Fair Housing Act, but imposes broader affirmative obligations on owners. These include the following:

- Owners must operate each housing program so that when viewed in its entirety is readily accessible to and usable by persons with disabilities. This includes making the property physically accessible and operating and administering it in a manner that enables people with disabilities to have an equal opportunity to

- participate in the housing program.
- Making and paying for physical modifications to units and/or common areas provided doing so doesn't pose a fundamental change in the program or an undue financial and administrative burden and provided other means of achieving program access isn't possible (such as reassignment of services).
- Providing auxiliary aids and services in order to ensure effective communications with applicants, tenants and the public.
- Providing changes in rules, policies and procedures if necessary to enable persons with disabilities to meet the requirements of tenancy-this obligation occurs throughout the occupancy cycle.
- Performing a self-evaluation to make sure the rules, policies and procedures don't discriminate on the basis of disability, including having a disparate impact on persons with disabilities.
- Developing a Transition Plan to make sure structural changes are made so that the program as a whole is accessible to, and usable by, persons with disabilities.
- Accessibility requirements for newly constructed or rehabilitated housing.

4350.3 REV-1
Section 3 (pg. 2-16)

2. ADDITIONAL NONDISCRIMINATION AND ACCESSIBILITY REQUIREMENTS FOR PERSONS WITH DISABILITIES

The remainder of the chapter goes into more detail regarding the affirmative obligations owners covered by the Handbook have under both the Fair Housing Act, and primarily Section 504 of the Rehabilitation Act. The Chapter is very clear, and as such we will highlight some of the important points. To begin, let's turn to the Glossary to look at the Civil Rights definition of Disability. As you can see this is a very broad definition. Remember, this isn't the same as the eligibility definition to for HUD Housing. Chapter 3, Figure 3-6 contained in the 4350.3 REV-1 contains that definition. Also, something that is not cited in the Handbook, which may be helpful for you to know is the term "*disability*" is generally used now instead of the term handicap in civil rights laws. The change in terms does not represent a definitional change. Rather it reflects a preference in terms by many people with disabilities.

4350.3 REV-1
Paragraph 2-27
(pg. 2-22)

A. NONDISCRIMINATION IN OWNER POLICIES

- Owners can't utilize policies and practices that overtly discriminate against persons with disabilities or that have the effect of discriminating against person with disabilities. However if a neutral rule has a discriminatory effect on persons

with disabilities, it would not be discriminatory if it is essential to the project, and modifying it would result in a fundamental alteration in the nature of the housing program or activity or undue financial and administrative burden.

- Owners aren't required to provide supportive services or other services (medical, social services...) if their programs don't usually.

B. COORDINATING EFFORTS TO COMPLY WITH SECTION 504 REQUIREMENTS

This paragraph makes it clear that if the owner, managing entity or project employs 15 or more employees-no matter where they work or what they do-the owner or managing agent must designate someone to coordinate compliance with 504. This clarifies how HUD interprets the 504 regulations, which simply says if the recipient has 15 or more employees. We recommend all properties-regardless of size-having someone to coordinate the property's 504 efforts. Those firms with 15 or more employees will be required to identify the 504 Coordinator during the Management & Occupancy Review (MOR).

C. COMMUNICATION WITH PERSONS WITH DISABILITIES

As stated earlier, owners and their agents have an obligation to ensure effective communication with applicants, tenants and members of the public, including taking steps to accommodate requests for effective communication. Owners don't have to take any action that would result in an undue financial and administrative burden or a fundamental alteration in the program. However, because owners must to the "maximum extent feasible" accommodate such requests, if an accommodation would have such a result, an owner must make alternative accommodations that wouldn't have such a result if possible.

1) Auxiliary Aides

Auxiliary Aides are Services or devices that enable individuals with impaired sensory, manual or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of the housing program, i.e., a sign language interpreter for someone who is hearing impaired, material in Braille for someone with a visual impairment... See Exhibit 2-2 for examples.

- When deciding what aide to provide, owners should give primary

consideration to the type(s) requested by the person.

- Auxiliary aides don't include individually prescribed devices.
- Although not stated in the Handbook, we recommend that an owner not assume a person with a disability needs an auxiliary aide. Nor can an owner require a person with a disability to accept one.

2) Written Communication

- Written communications, fact sheets, brochures, notices, literature, or publicity of any kind must state that the owner doesn't discriminate against persons with disabilities (See Exhibit 2-3).
- Owners, managing entities, or projects with 15 or more employees must include the name of the 504 coordinator,
- When a telephone number is listed, the TTY number or an equally effective system must also be listed.
- Information concerning the existence and location of services, activities, and facilities that have features that make them accessible to persons with disabilities must also be included. Written material must state if a property is fully accessible, or the universal symbol may be used.

3) Telecommunications

When an owner uses a phone to communicate with applicant, tenants, and the public they must also use a TTY or equally effective communication, such as a TTY. Exhibit 2-4 provides a checklist to determine if a communication system is an equally effective alternative to the TTY.

Small properties that rely solely on face-to-face communication are exempt, but the owner must provide alternative effective means of communication.

4350.3 REV-1
Paragraph 2-31
(pg. 2-26)

3. DETERMINING ELIGIBILITY OF APPLICANTS FOR ADMISSION AND ASSISTANCE

This is an important Paragraph. It requires owners to treat each applicant with a disability as an individual and not make assumptions about a person's tenancy based on his/her status as a person with a disability.

Owners must apply the eligibility and tenant selection criteria to all applicants. It

must take into consideration the owner's obligation to provide reasonable accommodation to applicants with disabilities under Fair Housing.

This paragraph also discusses the general rule that you can't ask an applicant or tenant or anyone they associate with if they have a disability, or the nature or severity of their disability, and the exceptions: if it is necessary to establish eligibility, to determine priority status.

The important thing to remember is to only ask what you need to know. For example, if you want to know if someone needs a unit with accessible features, ask, "Do you need a unit with accessible features?". You can't ask about ability to live independently because it is irrelevant for the purpose of complying with the lease. In other words, it doesn't matter whether a resident needs a personal care attendant to comply with the lease, but that he/she does so. As such, your inquiries must focus on ability to comply with the terms of the lease.

4350.3 REV-1
Paragraph 2-32
(pg. 2-28)

4. ASSIGNING ACCESSIBLE UNITS

This paragraph applies to properties with five or more units, but smaller properties are encouraged to comply.

A. Eligibility for Accessible Units

Two very important points are made in this paragraph:

If an eligible family who needs an accessible unit comes to the top of the waiting list and an accessible unit isn't available, an owner can't prohibit the family from accepting a non-accessible unit. Owners must make physical alterations to the nonaccessible unit as a reasonable accommodation, unless the alterations would result in an undue financial and administrative burden. If an appropriate sized accessible unit isn't available, owners may house an applicant needing an accessible unit in a larger accessible unit.

B. Order When Assigning Accessible Units

Owners must assign available accessible units to tenants/applicants in the following order:

- 1) When there is a current tenant or applicant who needs the features:
 - a. Current tenant who needs the accessible feature;
 - b. Next eligible applicant on the waiting list who needs the features.

- 2) When there is no current tenant or qualified applicant who needs the features:
 - a. Offer it to another household and **should** incorporate into the lease an agreement that the tenant will move to a comparable size unit in the project. The lease should state who will pay for such a move.
- 3) If the tenant who needs the accessible features moves, the owner should require remaining family members to move to a non-accessible unit if the lease permits.

C. Marketing Accessible Units

4350.3 REV-1
Paragraph 2-25
(pg. 2-19),
Paragraph 2-30
(pg. 2-26), and
Exhibit 2-1:
Distribution of
Accessible Units

Owners are required to have policies and practices in place to make sure that information about the availability of accessible units reaches eligible persons with disabilities. The Handbook refers us to Chapter 4, Section 2, information about marketing.

D. Distribution of Accessible Units

To the maximum extent feasible, it is expected that accessible units will be distributed throughout a project site and available with the same range of sizes and amenities as are the non-accessible units.

E. Moving Tenants Who Require Special Features into Accessible Units

4350.3 REV-1
Paragraph 2-33
(pg. 2-30)

This paragraph provides some important information:

- If a resident, who lives in a non-accessible unit, acquires a disability, needs an accessible unit and requests one, an owner may move the tenant to an accessible unit instead of making the person's unit accessible.
- If a tenant household is being moved to a different unit as a reasonable accommodation to a household member's disability, then the owner must pay for the move unless doing so would constitute an undue financial and administrative burden.
- If the person only needs minor modifications it may make more sense to make the modifications and leave the project's fully accessible units available for tenants who need such units.
- If a resident, as a result of his/her disability needs a transfer to a particular floor or location on a floor, the owner must move the household to the new unit if available. If it's not available, the owner should move the tenant when a unit that meets his/her needs becomes available.

5. OWNER SELF-EVALUATION AND TRANSITION PLAN

The deadline for completing both the Self-Evaluation and Transition Plan was July 11, 1989. Some Owners have still not done so. These are excellent management tools for making sure a property complies with Section 504. As such we've included a little information regarding each.

- A. The Self Evaluation identifies changes in the administration of the project that need to be performed in order to eliminate discrimination against persons with disabilities. Such changes will characteristically pertain to the way advertising of vacancies is done, applications taken and processed, screening performed, leases executed, services provided, recertifications performed, evictions performed, and occupancy documents formatted. Owners employing 15 or more persons were required, for at least three years following the completion of the self-evaluation; keep on file a description of the self-evaluation process, and a copy of the self-evaluation. It is a good idea for all sized properties to do so.
- B. The Transition Plan identifies any structural changes that will have to be made at the project in order to achieve 504's physical accessibility goals, the methods that will be used to make the project accessible, the schedule for achieving compliance, who will be responsible for overseeing the plan's implementation, and identifies who was consulted in completing the plan.
- C. It is important to note with regard to the Self Evaluation and the Transition Plan that both require consultation with interested persons. Such interested persons may be residents with disabilities, employees with disabilities, persons with disabilities from the community where a project is located, or advocates for persons with disabilities.

6. OWNER'S REQUIREMENTS FOR PROVIDING PHYSICAL ACCESS

This paragraph makes some very important points regarding an owner's obligation to remove physical barriers to enable persons with disabilities to participate fully in the housing program.

- Housing built after July 1, 1988 was required to comply with the Uniform Federal Accessibility Standards (UFAS). This access code covers common

areas, and requires a minimum of 5% of units be fully accessible to people with mobility impairments and an additional 2% be accessible to persons with visual and hearing impairments.

- Owners must provide accessible routes to and throughout the property, accessible parking, and accessible common areas, unless doing so would result in an undue financial and administrative burden.
- Owners don't have to make each location of an amenity or facility accessible. However, if there is only a one-of-a-kind amenity, the owner either has to provide physical access or figure out an administrative solution.

7. PHYSICAL ALTERATIONS TO EXISTING HOUSING

This paragraph outlines the requirements an owner must follow if he/she is making alterations to a property. In accordance with Section 504 there are two types of alterations: Substantial Alterations and Other Alterations. If an owner undertakes Substantial Alterations (the property has 15 or more units and the cost of the alterations is at least 75% of the replacement cost of the completed property) the requirements for new construction apply. If a property is undergoing "other alterations" and the property doesn't have 5% mobility accessible units and 2% (or a higher number if prescribed by HUD) vision and hearing accessible units the alterations must be accessible to the "maximum extent feasible", which means up to the point of undue financial and administrative burden.

The Handbook emphasizes that owners have a big incentive to reach the 5% goal. Until they do so, any alterations that are made to unit elements, such as the replacement of kitchen cabinets, must be done in an accessible manner. So, if you are replacing 100 units' kitchen cabinets, all 100 must be done in an accessible manner.

4350.3 REV-1
Paragraph 2-36
(pg. 2-35)

8. BUILDING STANDARDS (504)

When property owners make physical changes to units, common areas, facilities, and parking they are required to use the Uniform Federal Accessibility Standards (UFAS) or another set of guidelines (such as state issued accessibility guidelines) which provides equal or greater access to the buildings for persons with disabilities.

As an addition to the generalized information presented here we strongly recommend that at least one person at every HUD-assisted housing project get a copy of the UFAS and take the time to familiarize him/herself with them. They are highly technical in the design/modification requirements they stipulate, so it is not wise to make structural modifications without consulting them first. You may end up with a costly job that does not succeed in meeting the requirements.

9. LIMITATIONS ON OWNERS' OBLIGATIONS TO MAKE THEIR HOUSING PHYSICALLY ACCESSIBLE

- Owners do not have to make structural changes if other methods, which may not cost as much, are effective in making the program accessible to individuals with disabilities.
- Owners are not required to make alterations that require removing or altering a load bearing wall.
- Owners don't have to make mechanical rooms and other spaces accessible when, because of their intended use, don't require accessibility by persons with disabilities (including employees).
- Owners do not have to install an elevator solely to make units accessible.

10. REASONABLE ACCOMMODATIONS

4350.3 REV-1
Paragraphs 2-38
- 2-42 (pgs.
2-36 - 2-38)
Exhibit 2-2,
Examples of
Requests for
Auxiliary Aids
and Reasonable
Accommoda-
tion by Persons
with Disabilities

Reasonable Accommodations are changes in rules, policies and procedures, or a physical modification to a unit or common area, necessary to enable a person with a disability equal access to and/or enjoyment of the housing program.

- A very important point made in paragraph 2-39 is that it isn't enough that a person with a disability "wants" the accommodation, he/she must need it as a direct result of his/her disability. As such, a provider may verify that a person has a disability (civil rights definition), and needs the accommodation as a direct result of his/her disability in order to have equal access to and/or enjoyment of the housing program.

Note: It is important to note that HUD and the Department of Justice issued a joint statement regarding verification of disability in these cases. The memorandum was published May 17, 2004. In this document, HUD makes it clear that an owner should not verify a person's disability if the disability is obvious or known. In addition, an owner should not verify the need for a reasonable accommodation if the need is obvious or known.

- If a provider refuses to make an accommodation because it's not reasonable (poses a fundamental change in the essential nature of the housing program, or an undue financial and administrative burden) the provider should engage in an interactive dialogue to determine if an alternative accommodation would meet the person's needs.
- A request for a reasonable accommodation doesn't have to be in writing, can

be made by the person with the disability, a family member, or someone else acting on the individual's behalf, and the person doesn't have to use the term "reasonable accommodation" when making a request.

The examples cited in paragraph 2-42 are very illustrative, and include reinstating someone to their place on the waiting list if they fail to respond to a notice on time because he/she couldn't understand the notice because of his/her disability.

4350.3 REV-1
Paragraph 2-43
(pg. 2-39),
Exhibit
2-5: Examples
of Fundamental
Alterations
Exhibit 2-6,
Examples of
Undue Financial
and
Administrative
Burden

11. Limits On Obligation To Provide Reasonable Accommodation

This Paragraph, and the exhibits, covers a lot of ground. Important points to consider, include the following:

- A. Owners do not have to do anything that they can show will result in either a fundamental alteration of the program or undue financial and administrative burden. Exhibits 2-5 and 2-6 provide a description of relevant cases.
- B. Undue financial and administrative burdens are site-specific, determined by the financial and human resources available to complete 504 work at any given project. Thus it is impossible to set a dollar amount and say, *"This is the point at which financial burdens would become undue at any HUD-assisted project."* Every HUD-assisted project reaches the point of undue financial and administrative burdens at a different point. Furthermore HUD and the regulations have provided no formula to arrive at the point at which undue burdens would be incurred -- it is the owner's responsibility to make such a determination.
- C. HUD Field Offices will consider a request to use residual receipts to pay for alterations under 504.
- D. According to the Handbook, the reserve replacement account is to be used for replacing existing items. *"If HUD approval is received for using the reserve for replacements account for any other purpose (e.g., 504 alterations), then the account must be replenished through project rental income, generally within one year."*

The most important word in the sentence cited is *"generally,"* because it

acknowledges that the repayment to the replacement reserve is not required to be performed in one year and does not always occur within one year. There is no regulatory requirement that the payback to the replacement reserve occur within one year, and the use of the word "*generally*" seems to indicate that the rate of payback is negotiable between an owner and HUD. Example 4, in exhibit 2-6 indicates that if a rent increase is necessary to replenish the reserves within the year then this would constitute an undue financial and administrative burden.

- E. An owner only has an obligation to take actions **up to the point** at which undue burdens would result.
- F. Owners are not required to provide services that would result in a fundamental alteration of the nature of the housing program, but may not prevent tenants for paying for such services out of their own pockets. For example, owners **are not required** to provide housekeeping services for persons with disabilities if they do **not** provide them for **all** tenants, but cannot prevent a person with disabilities from paying for such services on his/her own.

4350.3 REV-1
Paragraph 2-44
(pg. 2-41)

12. ASSISTANCE ANIMALS AS A REASONABLE ACCOMMODATION

Assistance animals as a form of reasonable accommodation has historically been difficult for some owners to understand and controversial, which we believe is why HUD has dedicated a paragraph to this topic. A few key points:

- Assistance animals, which are animals that work, are often referred to as service animals, support animals, or therapy animals. The term includes animals that provide a function for persons with disabilities, and this can include providing emotional support to persons with disabilities who have a disability-related need for such support.
- A housing provider can't refuse to allow a person with a disability to have an assistance animal solely because it doesn't have formal training.
- There has to be a nexus or relationship between the person's disability and his/her need for the animal.
- If a person with a disability needs an assistance animal as a direct result of his/her disability, it is a violation of section 504 and the Fair Housing act to refuse unless an owner could somehow demonstrate that allowing the animal poses a fundamental alteration in the program or an undue financial and administrative burden, or the animal posed a direct threat to others or the property, and the threat couldn't be removed through a reasonable accommodation.

13. FAIR HOUSING ACT BASIC ACCESSIBILITY REQUIREMENTS

This paragraph is self-explanatory

14. OWNER AND TENANT RESPONSIBILITIES WHEN TENANT MODIFIES UNIT IN ACCORDANCE WITH THE FAIR HOUSING ACT

There is some confusion about this section of the Fair Housing Amendments Act. We have had people ask us, *"When can an owner require a tenant to make modifications to the tenant's unit at the tenant's own expense?"* If you are managing a federally assisted property, the answer -- never. An owner **may not refuse to permit** a tenant with disabilities to make reasonable modifications to his/her unit or common areas in the interest of achieving greater accessibility. An owner of a federally assisted project is still required under Section 504 to make reasonable adjustments and alterations at an owner's own expense and to operate their housing to be accessible to persons with disabilities.

If an individual with disabilities requests an accommodation that would result in a fundamental alteration in the nature of the project or program or in undue financial and administrative burdens, if done at the owner's expense, the owner may suggest that the individual may wish to make the modification at his/her own expense as indicated in this Paragraph.

Note that in such an instance the owner may **suggest, but not require** the tenant to make the modifications at his/her own expense.

- **Restoration of the Premises**

If a tenant makes a modification, as permitted by the FHAA, the owner may require the tenant (when reasonable) to agree to restore the unit to its original condition before the modification, putting aside normal wear and tear. If an owner is concerned that the tenant won't have the money available to restore the premises, the owner can require the tenant to pay into an interest-bearing escrow account a reasonable amount of money, not to exceed the cost of restoration. Any interest belongs to the tenant. However, an owner cannot increase a required security deposit if she/he is concerned that a tenant with a disability won't restore the property. Owners can also condition permission on the tenant providing reasonable assurances that the work will be done in a workman-like manner and that all required permits will be obtained.

15. REQUIRED DATA AND RECORD-KEEPING, HOUSING DISCRIMINATION COMPLAINTS, AND COMPLIANCE REVIEW

- HUD requires owners to offer applicants and tenants the opportunity to self-disclose race and ethnicity of household members.
- HUD also requires owners to report the numbers of persons with disabilities in their housing. The Handbook makes clear that owners should consistently ask all applicants and tenants the same questions in order to avoid claims of discrimination.
- HUD is responsible for responding to complaints involving the Fair Housing Act and Section 504.
- Owners must keep civil rights records in accordance with regulations, which include race and ethnicity data, and compliance with 504.
- Owners must allow HUD staff and Contract Administrators access to relevant records for determining civil rights compliance. Compliance reviews are conducted by FHEO staff in accordance with Departmental procedures. HUD Multifamily Housing Staff also conduct management reviews, and use checklists and operating procedures developed between the Office of Fair Housing and the Office of Multifamily housing.

CHAPTER 1
CIVIL RIGHTS AND NONDISCRIMINATION 504 AND
FAIR HOUSING NON-DISCRIMINATION AGAINST
HANDICAPPED/DISABLED PERSONS
MINI QUIZ

- TRUE 1. If an owner determines that a 504-compliance action under consideration
FALSE would result in undue financial and administrative burdens, the owner may
choose to do nothing at all.
- TRUE 2. If a 504 unit modification needed to achieve full accessibility for a
FALSE handicapped resident's unit is affordable to the project, the owner may not
require the tenant to pay for the modification, even if the tenant could afford
to do so.
- TRUE 3. If a tenant requiring accessible unit features refuses to transfer to a vacant
FALSE unit containing those features, the owner must modify the tenant's current
unit to provide those features.
- TRUE 4. A rule can't be discriminatory if it doesn't overtly discriminate against a
FALSE protected class.

CHAPTER 2

OVERVIEW OF ELIGIBILITY CRITERIA

Program eligibility criteria are presented in the 4350.3 REV-1, Chapter 3, Section 1, Paragraph 3-5 and Project eligibility criteria, presented in Chapter 4 of this Manual, can be found in the 4350.3 REV-1 in Chapter 3, Section 2, Paragraph 3-14. The set of documents for compliance with the citizenship rule can be found in Exhibits 3-3 through 3-14.

4350.3 REV-1
Paragraph 3-1
(pg. 3-1)

I. INTRODUCTION

In order for a household to be eligible for assisted housing it must meet certain criteria that have been established by the statutes, regulations, and HUD Handbooks that cover each housing program. Before we examine the various criteria used to determine eligibility for assistance, it is important to be clear on the different types of subsidies covered by the 4350.3 REV-1. We will review the three categories of subsidy as presented in the handbook.

A. FINANCING SUBSIDIES: MORTGAGE INSURANCE AND MORTGAGE INTEREST RATE SUBSIDIES

Mortgage insurance and mortgage interest rate subsidies are financing subsidies that were popular mechanisms for development and operation of affordable rental housing. Often referred to as "*shallow subsidy*," the project's mortgage rather than the tenant's rent is assisted. Tenants, no matter what their income, are required to pay at least a certain base amount of rent per month in order to cover the debt servicing of the project's mortgage. In addition, in the "*shallow subsidy*" rent programs, some tenants pay a higher threshold rent amount called the market rent. Tenants paying rents equal to the threshold rent amount (market rent) are not considered to be assisted. Such programs include:

1. Section 221(d)(3)BMIR - BMIR (Below Market Interest Rate) Contract Rent and BMIR Market Rent.
2. Section 236 - 236 Basic Rent and 236 Market Rent.
3. Section 231 – mortgage loan subsidies

B. DIRECT LOANS AND CAPITAL ADVANCES

The Direct Loan Program, which began in the 1960's, has developed over the years into a capital advance program. These forms of assistances allow the development of rental housing; and when combined with other subsidies, create affordable rents. The following programs fall into this second category of assistance:

1. Section 202 Direct, Low Interest Loan Program – this loan program was stopped in 1976.
2. Section 202, Direct, Formula Interest Rate Loans - commonly known as the “202/8” program, this program replaced the original 202 and ceased in 1991.
3. Section 202 or 811 Capital Advances – begun in 1991, this capital advance program replaced the 202/8 direct, formula interest rate loans and provided housing for the elderly (202) or disabled (811).

C. PROJECT RENTAL SUBSIDIES

Project rental subsidies are paid directly to the owner on behalf of tenants in order to maintain affordable rents. Sometimes known as "*deep subsidy*" housing assistance, the family's rent is based on its ability to pay (the higher the income, the higher the rent). Such project rental subsidies are used for the following programs covered by the 4350.3 REV-1:

1. Section 8 Programs;
2. Rent Supplement;
3. RAP (Rental Assistance Payments);
4. PACs - Project Assistance Contracts; and,
5. PRACs – Project Rental Assistance Contracts.

There is very little Rent Supplement and RAP left at this time, since most of it was converted to Section 8 in the 1980's. PACs were funded in FY 1989 and FY 1990 for 202 developments housing persons with disabilities. PRACs replaced the Project Assistance Contracts in 1991 and offer rental subsidy for 202 and 811 apartment communities.

D. PROGRAM ELIGIBILITY CRITERIA

The handbook categorizes eligibility criteria in two ways: Program Eligibility, discussed in this Chapter, and Project Eligibility, discussed in Chapter 4. Applicants must meet both categories to qualify for housing assistance. Let's work our way through these criteria, beginning with program eligibility.

1. *THE HOUSEHOLD'S ANNUAL INCOME DOES NOT EXCEED THE INCOME LIMITS.*

This means the family is income eligible if its annual (**not** adjusted) income does not exceed the income limit prescribed for the housing program to which the family is applying. This will be discussed in greater detail in Chapter 3 of this Manual.

2. *THE APPLICANT AGREES TO PAY THE RENT REQUIRED BY THE SUBSIDY PROGRAM UNDER WHICH THE APPLICANT WILL RECEIVE ASSISTANCE.*

This is fairly self-explanatory. Each housing program has its own rent formula and method of computing rent. The applicant agrees to pay the rent prescribed by the housing program to which he/she is applying.

3. *THE UNIT WILL BE THE FAMILY'S ONLY RESIDENCE.*

Housing assistance is not made available for vacation getaways or units that will be occupied only on a part-time basis. Owners must use the EIV Existing Tenant Search when screening applicants to search for applicants who may be receiving assistance at another location.

4. *THE APPLICANT SATISFIES THE SOCIAL SECURITY NUMBER DISCLOSURE AND VERIFICATION REQUIREMENT.*

All applicant household members must disclose and provide verification of Social Security Numbers, except for those individuals who do not contend their eligible immigration status or tenants who were age 62 or older as of 1/31/2010, and whose initial determination of eligibility was before 1/31/2010. Applicants

may not be admitted until SSNs for all household members have been disclosed and verified. Applicants have 90 days after being offered a unit to disclose and verify SSNs for all household members. After the 90-day time period, if the applicant has not been able to disclose and verify SSNs for all household members, the applicant should be determined ineligible and removed from the waiting list.

5. *INFORMATION REPORTED BY THE FAMILY IS SUBJECT TO VERIFICATION.*

All information reported by applicant family members is subject to verification before a final determination of eligibility is made.

6. *ALL ADULTS MUST SIGN THE CONSENT FOR RELEASE OF INFORMATION FORMS PRIOR TO RECEIVING ASSISTANCE AND ANNUALLY.*

In order to qualify for housing assistance, each applicant/participant family member age 18 and older must sign consents for release of income information every time the family is certified or recertified.

7. *THE APPLICANT SATISFIES THE CITIZENSHIP DISCLOSURE AND REQUIREMENT.*

Only U.S. citizens and eligible non-citizens are eligible for housing assistance under the Section 8, 202/8, RAP, Rent Supplement, and 236 programs. More detailed information is presented later in this chapter.

Following is a summary of the *project eligibility* criteria, as identified in the handbook.

8. *THE APPLICANT MEETS THE ELIGIBILITY CRITERIA FOR ADMISSION TO SECTION 8 PROJECTS.*

This is another aspect of income eligibility. Some housing programs, such as Section 8, target the admission of very low- and low-income families. If a family's annual income doesn't meet the program's definition of the target group it is not qualified. This will be discussed more in Chapter 4 of this Manual.

9. *THE APPLICANT MEETS THE ELIGIBILITY CRITERIA FOR THE SPECIFIC PROJECT/UNIT.*

This pertains to eligible family composition, which is discussed in Chapter 4 of this Manual. Some HUD housing programs/complexes are limited to families with specific characteristics, such as elderly families. Similarly, specific units, such as those that are wheelchair accessible, may be targeted for families in which the head or another family member uses a wheelchair.

10. *THE OWNER AND THE TENANT COMPLY WITH THE UNIT SIZE STANDARDS.*

Unit size standards are the property's method of determining the right size unit to house families of different sizes and compositions. As we shall see when we examine unit size standards in Chapter 5 of this Manual, it is more appropriate to think of them as occupancy "*guidelines*" in this day and age. Hard and fast unit size standards have come under serious legal debate.

4350.3 REV-1 **E. CITIZENSHIP RULE**

Paragraph 3-12

(pg. 3-25)

The rule implementing restriction on assistance to non-citizens requires owners to administer the regulatory requirements with all applicant family members. Each applicant family member is responsible for declaring his or her citizenship or eligible immigration status. We shall provide an overview of this comprehensive rule below.

Applicability

The restriction on assistance to non-citizens applies to all properties covered by this handbook **except** the following:

1. Section 221(d)(3) BMIR properties;
2. Section 202 PAC;
3. Section 202 PRAC;
4. Section 811 PRAC; and,
5. Section 202 projects with units not receiving assistance under Section 8 or Rent Supplement.

Notification Requirements

Owners are required to provide notification to applicants of the requirement to either submit evidence of citizenship or eligible immigration status or to choose not to claim eligible status. A sample notice is found in the Handbook in Exhibit 3-3.

The notification must:

- a. State that financial assistance is contingent on submission and verification of citizenship or eligible immigration status;
- b. Describe the type of evidence that must be submitted;
- c. Give the time period in which evidence must be submitted; and
- d. State that assistance may be prorated, denied, or terminated if any or all family members are determined ineligible for assistance.

Upon completion of documentation and verification requirements, owners shall notify families that they are eligible for assistance, or for partial assistance, as a mixed family.

Owners must notify families in writing if they are found to be ineligible for assistance under the program requirements.

Required Documentation of Citizenship/Immigration Status

The owner **must** obtain the following documentation for each family member:

- a. From U.S. citizens, a signed declaration of citizenship. Owner may require verification of the declaration by requiring presentation of a U.S. birth certificate or U.S. passport.
- b. From non-citizens 62 years and older, a signed declaration of eligible non-citizen status and proof of age;
- c. From non-citizens under 62 years of age claiming eligible status:

- (1) A signed declaration of eligible immigration status;
- (2) A signed consent form; and
- (3) One of the DHS-approved documents.

Non-citizens who choose not to claim eligible immigration status may elect to sign a statement that they acknowledge their ineligibility for assistance.

Timeframes for Submitting Evidence to the Owner

The applicant is required to provide the appropriate documentation within the timeframe specified by the owner. If she/he cannot supply the documentation, the owner may grant the applicant an extension of not more than 30 days. The extension is provided only if the applicant certifies that the documentation is temporarily unavailable and additional time is needed to collect and submit the required documentation.

Prohibition Against Delay of Assistance

Once the owner has determined the citizenship/immigration status of a family assisted prior to completion of the verification or appeal process, the owner must do as follows:

- a. Provide full assistance to a family that has been determined eligible;
- b. Provide assistance to the family member determined to be eligible and to those family members that submitted their immigration documents on time.
- c. If any family members did not provide the required immigration documentation, then the assistance for the family must be prorated.
- d. Owners continue to provide assistance to those family members who submitted their immigration documentation in a timely manner until their immigration status has been verified.

Mixed Families

A mixed family is one whose members include citizens and eligible immigrants as well as noncitizens without eligible immigration status. Mixed families that were in occupancy and received full assistance prior to the verification of citizenship/immigration status may be eligible for one of three types of assistance:

- a. Continued assistance if the family was receiving assistance prior to June 19, 1995;
- b. Prorated assistance (based on the # of family members who are eligible compared with the total # of family members); or
- c. Temporary deferral of termination of assistance.

Applicant families that are mixed are eligible *only* for prorated assistance.

4350.3 Rev-1

Paragraph 3-13

Pg. 3-40

F. STUDENT RULE

Section 8 assistance shall not be provided to any individual who:

- a. Is a part time or a full time student at an institution of higher education; and,
- b. Is under the age of 24; and,
- c. Is not married; and,
- d. Is not a Veteran; and,
- e. Does not have a dependent child; and,
- f. Is not a person with a disability and receiving section 8 assistance as of November 30, 2005; and,
- g. Is not living with his or her parents who are receiving Section 8 assistance; and,
- h. Is not individually eligible to receive Section 8 assistance or has parents that are not eligible to receive Section 8 assistance.

Assistance can't be prorated, so if an ineligible student is a member of a household receiving Section 8 assistance, the assistance for the whole household will be terminated.

Rent Supp, Rap Section 22(d)(3), BMIR, Section 236, Section 202
PAC, Section 202 or Section 811 PRAC

A household member applying separate from his/her parent enrolled at an institution of higher learning is only eligible if he or she is:

- a. Of legal age to contract
- b. Established a household separate from his/her parents or legal guardian for at least one year prior to application for occupancy, or meet the Department of Education's definition of independent student (see glossary);
- c. Not be claimed as a dependent by parents or legal guardians for tax purposes; and
- d. Obtain a certification of the amount of financial assistance that will be provided by parents, signed by the individual providing the support.

ELIGIBILITY CRITERIA MINI QUIZ

- TRUE 1. It would satisfy the Social Security number/certification requirement for the
FALSE head of an applicant household to sign a certification on behalf of a 19 year-old family member, stating that he/she had not had a Social Security number assigned.
- TRUE 2. The requirement for family members age 18 and older to sign consents for
FALSE release of income information is a one-time requirement.
- TRUE 3. A mixed applicant family is eligible to receive only prorated assistance.
FALSE
- TRUE 4. It is not permitted to limit participation in any HUD housing program on the
FALSE basis of age.
- TRUE 5. An applicant family whose annual income exceeded the income limit in effect
FALSE for the housing program to which they were applying would be ineligible for housing assistance under that program.

CHAPTER 3 INCOME ELIGIBILITY AND ADMITTING OVER-INCOME APPLICANTS

Income eligibility is discussed in the 4350.3 REV-1, Chapter 3, and Paragraph 3-6. A chart detailing the income limits by subsidy program can be found in Figure 3-3. Admission of over-income applicants is presented in Paragraph 3-8.

I. INTRODUCTION

A family is **income eligible** if its annual income does not exceed the appropriate HUD programmatic income guideline limit in effect at the housing complex to which the family is applying. Income eligibility is based on annual income, which will be discussed in Chapter 14 of this Manual. For the time being, though, it will suffice to understand how income limits work to determine income eligibility.

Another important factor addressed in this Chapter is HUD's income targeting requirements for the Section 8 subsidy program. A brief discussion of income targeting will be included here; greater detail will follow in Chapter 8.

4350.3 REV-1
Paragraph 3-6D
(pg. 3-5)

A. PROGRAMMATIC INCOME LIMITS

HUD sets programmatic income limits, adjusted for family size, annually. They are prescribed as follows:

Income Limit	Median Income for the Area
BMIR income limit	95% of median income
Low-income limit	80% of median income
Very low-income limit	50% of median income
Extremely low-income limit	30% of median income

The extremely low-income limit is not used to determine income eligibility; rather it is applied by owners to insure income-targeting requirements are met for apartment complexes receiving Section 8 assistance.

Based on the income limits provided above, we can then determine the applicable income limits by subsidy program, as listed below.

Figure 3-3: Income Limits by Program

<u>Subsidy</u>	<u>Type of Income Limit</u>
Section 8 (pre-1981)	Low, very low, and extremely low-income limit
Section 8 (post-1981)	Very low and extremely low-income limit
Section 236	Low-income limit
Rent Supplement	Low-income limit
Rental Assistance	Low-income limit
Section 202 with Section 8	Pre-1981: Low, very low, and extremely low-income limit Post-1981: Very low and extremely low-income limit
Section 202 w/Rent Supp	Low-income limit
Section 202 w/out assistance	Low-income limit
Section 202/811 PRAC, except those funded in FY1995	Very low-income limit
Section 202/811 PRAC funded in FY 1995	Low-income limit
Section 202 PACs	Low-income limit
Section 221(d)(3) BMIR	BMIR income limit

Note: In selecting the appropriate income limit to apply to a family, based upon its size, remember **not** to include live-in attendants.

4350.3 REV-1
Paragraph 3-6E
(pg. 3-8)

B. INCOME LIMITS AND FAMILY SIZE

In making a determination of family size for income eligibility purposes, the owner must include all persons who will be residing in the unit, *except* for the following:

- ❖ Live In Aides;
- ❖ Guests.

Management must include for family size all full-time family members and the persons listed below who, although not living in the unit, are counted for income eligibility:

1. Children temporarily absent;

2. Children in joint custody agreements who are present in the household 50% or more;

3. Children away at school but home during school breaks;

NOTE: Owners should not count children who are away at school who have established residency at another address or location as evidenced by a lease agreement. The new address or location is considered the student's principle place of residence.

4. Unborn children of pregnant women;

5. Children in the process of being adopted;

6. Temporarily absent family members;

7. Persons in a hospital or rehab facility for fixed periods of time; and,

8. Persons permanently confined to a hospital or nursing home (the family decides if the person should be included in the household and must be other than Head, Co-Head, or Spouse. The family determines at the time of application who is the Head and/or Co-Head, and it can't be changed to gain the benefit of a deduction/lower rent).

Only the income of family members is included in determining income eligibility.

C. LIMITATIONS ON ADMISSION OF LOW-INCOME TENANTS TO SECTION 8 PROJECTS/UNITS

4350.3 REV-1
Paragraph 3-7
(pg. 3-12)

In instances where Section 8 units were converted from Rent Sup or RAP, or were part of staged contracts, the restriction on admission of low-income applicants applies **only if** the conversion to Section 8 or the initial stage of the HAP contract was effective on or after 10/1/81. These units are referred to as "*post-universe*" units. Units with HAP contracts effective prior to 10/1/81 are called "*pre-universe*" units.

1. THE LIMITATION WORKS IN ITS SIMPLEST FORM AS FOLLOWS:

Section 8 projects/units with HAP contracts initially effective on, or after, 10/1/81 (post-universe) may not assist applicants who are not very low-income families, or bring current residents not receiving Section 8 on the program unless they are very low-income families. There are exceptional instances, in which applicants/residents of these complexes could be given Section 8 assistance, which we will discuss

momentarily. The limitation on families who are not very low-income does not apply to families who are already on the Section 8 program. Thus, a family who was very low-income at the time they were admitted to a Section 8 complex, but whose financial circumstances improved to the point where they were no longer very low-income would not be required to move or have their assistance terminated for that reason.

2. EXCEPTIONAL INSTANCES IN WHICH APPLICANTS/RESIDENTS OF THESE COMPLEXES COULD BE GIVEN SECTION 8 ASSISTANCE

Post 1981-Universe

At properties with Section 8 contracts effective on or after Oct. 1, 1981 only families at or below the very low-income limit are eligible for assistance. HUD has nationwide 15% exception authority permitting owners to exceed the post universe very low-income limit. Such exception requests must be submitted to HUD for review and approval.

Pre 1981-Universe

In pre-universe projects there is a nationwide 25% restriction of overall occupancy for families that are other than low-income. In other words, properties with Section 8 contracts effective prior to October 1, 1981, may admit up to 25% of applicants with incomes up to the low-income limits.

Eligible In-Place Tenants

Current tenants of "post universe" projects/units, who are not already receiving Section 8 and who are not very low-income families, may be given Section 8 assistance only in the circumstances described in the 4350.3 REV-1 in paragraph 3-7A.

They are as follows:

- a. if a tenant is being converted from RAP or rent supplement;
- b. if a tenant is eligible to receive Section 8 in conjunction with the sale of HUD-owned property; and
- c. if a tenant is paying more than 30% of income toward rent and is at, or below, 80% of median income.

3. GROUNDS FOR GRANTING EXCEPTIONS

The grounds for which HUD will consider granting exceptions to the limitations on admission of low-income families are very technical, and set forth in Paragraph 3-7D. The grounds for granting exceptions are categorized as “tenant-based,” pertaining to some factor specific to a particular family’s circumstances, or “project-based,” relating to factors in effect at the development in question.

4350.3 REV-1
Paragraph 3-8
(pg. 3-15)

D. PROGRAM-SPECIFIC LIMITATIONS ON ADMISSION OF INELIGIBLE APPLICANTS

These limitations are as follows:

- 1. Ineligible applicants are not permitted to move into BMIR units without prior HUD approval.
- 2. 236, Rent Sup, and RAP units share a policy which requires owners of such units to seek HUD's approval before admitting Market Rent tenants, if such admissions would result in Market Rent tenants occupying more than 10% of the units in a complex.
- 3. Section 8, 202/8 or PAC, and 202/811PRAC units also share a policy which requires owners to obtain HUD’s prior written approval before admitting any income ineligible applicant. 202 or 811 PRAC

developments must have waivers approved by HUD Headquarters.

4350.3 REV-1
Paragraph 3-8
(pg. 3-16)

For the different Section 8 units, policies limiting the admission of ineligible applicants tend to be dependent on the effective date of either the HAP Agreement or the HAP Contract on the units.

E. REQUIRED ACTIONS BEFORE ADMITTING INELIGIBLE APPLICANTS

These may be listed as:

1. Admitting eligible applicants who have passed screening before ineligible applicants.
2. Making reasonable attempts through marketing to attract eligible applicants.
3. Putting certifications in the files of any admitted ineligible applicants, certifying that steps 1 and 2 above were taken before admitting them

4350.3 REV-1
Paragraph 3-8D
(pg. 3-17)

F. ADMISSION OF POLICE OFFICERS OR SECURITY PERSONNEL IN SECTION 8 DEVELOPMENTS

Owners have the option to lease a Section 8 unit to an over-income police officer or security personnel for the express purpose of addressing crime related issues. Such officers must work at least 35 hours per week.

A written plan must be submitted to and approved by HUD detailing the activities, relationship, rent, benefits, and a description of the existing conditions at the apartment community.

INCOME ELIGIBILITY AND ADMITTING OVER INCOME TENANTS MINI QUIZ

Dan Riordan is a single applicant to the Wilby Apartments, a Section 8 complex with a HAP contract effective date of 3/1/80 (pre-universe) Section 8 low-income. Dan's annual income exceeds the one-person, Section 8, very low-income limit for the area, but is less than the Section 8 low-income limit.

TRUE

1. Dan Riordan is income eligible for admission to the Wilby Apartments.

FALSE

2. An applicant who was income eligible for a BMIR unit but who was not income eligible for a Section 8 post universe unit would have an annual income that fell between % and % of the median income for the area.

The Giordano family consists of head, Vinnie; spouse, Lucy; and foster children Randy, Luke, and Barry.

TRUE

3. You should use a five-person income limit to determine the Giordano's income eligibility.

FALSE

CHAPTER 4

PROJECT ELIGIBILITY

Project eligibility is discussed in the 4350.3 REV-1, Chapter 3, Section 2, beginning at Paragraph 3-14 and concluding at Paragraph 3-22. For a discussion on Occupancy Standards and project eligibility, see Chapter 5 of the Course Manual. Important definitions used to determine eligible family composition are presented in Figure 3-6 in Chapter 3. Figure 3-5 is a chart summarizing the various definitions of elderly and disabled by subsidy program.

I. INTRODUCTION

The 4350.3 REV-1 incorporates a variety of changes over the past several years into Section 2 of Chapter 3, entitled: Project Eligibility. HUD defines project eligibility as the set of criteria by which the owner establishes eligibility for occupancy in a specific apartment community. We see now in the Handbook a much more comprehensive treatment of determining project eligibility. In this chapter we will examine three definitions of Family and Elderly Family; six definitions of disabled; and eight subsidy programs. Figures 3-5 and 3-6 located in Chapter 3 of the Handbook are absolutely essential references for managers to use when accurately determining the correct definition of elderly and/or disabled in making eligibility determinations. The charts and definitions provide an understanding of: identifying the subsidy program; determining if the housing is for either elderly or for persons with disabilities; and then applying the proper definition to use for eligibility purposes. Let's try now to learn the various rules, policies, and definitions used to determine eligible family composition. We will begin by considering the Department's treatment of determining eligibility of a remaining member of a tenant family.

A. ELIGIBILITY OF A REMAINING MEMBER OF A TENANT FAMILY

From time to time owners will face the situation of having to make a determination as to the status of the remaining member of a tenant family when the qualifying person(s) moves out of the unit. The 4350.3 REV-1 provides us with some guidance in making this decision; careful attention is required to the specific requirements by subsidy programs (i.e. 202 or 811 programs). Let's review the requirements below.

For a remaining member of a tenant family to qualify for continued occupancy in the unit, the following conditions must be met:

1. The remaining member must be included in the lease agreement at the time the qualifying family member leaves the unit; and,
2. The remaining member must be of legal age by state law.

REMAINING FAMILY MEMBERS IN THE 202 AND 811 PROGRAMS

In the 202 or 811 programs, the remaining member is defined as: *"the surviving member or members of an elderly family or family with disabilities that was a party to the lease and living in the assisted unit with the now deceased member of the family until the time of his or her death."*

In such situations, the remaining member, based on the death of the family member, can remain in the unit and will pay a rent based on his or her income. This remaining member's eligibility need not be determined in this instance.

However, if the qualifying family member leaves the unit for any reason other than death in the 202/8, 202 PAC or PRAC, or 811 PRAC programs, then the owner must determine the eligibility of the remaining member. The remaining member must meet the eligibility criteria for the property, income, age, and/or disability, as applicable. If the remaining member is ineligible, s/he may not receive assistance and may or may not be allowed to remain in the unit, as follows:

- ❖ The remaining member in a 202/8 or 202 PAC development *may* (can) continue to live in the unit and must pay the contract rent;
- ❖ The remaining member in a 202 or 811 PRAC development *may not* (can't) remain in the unit.

Let's consider an example to illustrate how these regulations apply.

The Jones family consists of Mildred, age 66, Head of Household, and her adult daughter, Betsy, age 42. They reside in Harbor Haven, a 202/8 complex for the elderly development. Mildred suffers a debilitating stroke, which requires that she move out of the apartment and permanently into a life care facility. The manager determines Betsy's eligibility as a remaining member of the family and finds that she is ineligible, as she does not meet the definition of elderly family. Because Betsy is living in a 202/8 property, the manager informs her that she may continue to reside in the unit and pay the contract rent.

4350.3 REV-1
Paragraph 3-17
(pg. 3-45)
Figure 3-6
(pg. 3-49)

B. DEFINITIONS

Owners are required to use the definitions presented in Figure 3-6 of the 4350.3 REV-1 in determining eligibility for their housing programs. Since use of these definitions is mandatory, you will need to familiarize yourself with them, or at the very least make sure you know where to go to find the definitions when you need them. Let's work through the definitions that relate to eligible family composition and relate them to the housing programs that use them.

After doing this, we will look at the chart that summarizes the definitions of disability, handicap, and elderly persons used by each program for the purpose of eligibility. The combination of definitions and the chart, which is Figure 3-5 from the Handbook, will hopefully help you keep this information straight. It is also important to note that for 202/8, 202 PAC and 811 programs; eligibility is often limited to a specific disability category.

1. Chronically mentally ill:

Listed as part of Definition H – Person with a Disability (Handicapped

Person). Used to determine eligibility for the 236, 221(d)(3), 202/8, 202 PAC and 811 PRAC programs.

2. **Developmentally Disabled:**

Listed as part of Definition E – Person with Disabilities and Definition H – Person with a Disability (Handicapped Person). This definition is accepted for disability in determining eligibility for the Section 8, 231 with Section 8, 236, 221(d)(3), 202/8, 202 PAC and 811 PRAC programs.

3. **Disabled Family:**

Defined as Definition D – Disabled Family. This definition is a family whose head, spouse or sole member is a person with disabilities. It is the definition used in determining eligibility for the Section 8 and 231 with Section 8 programs.

4. **Person with Disabilities:**

Considered as Definition E – Person with Disabilities. This definition is used to determine eligibility for Section 8 and 231 with Section 8 programs.

5. **Disabled Household:**

Listed as Definition F and used to determine eligibility in the 811 PRAC program; this household includes one or more persons at least one of whom is adult with a disability, as well as the surviving members of the household living with a family member who died.

6. **Disabled (Handicapped) Family:**

Considered as Definition G; this is the definition applied in determining eligibility for the 202 PAC program.

7. **Person with a Disability (Handicapped Person):**

Listed as Definition H; this comprehensive definition includes presence of a physical disability, developmental disability, or chronic mental illness. It is used to determine eligibility in the 236, 221(d)(3), 202/8, 202 PAC and 811 PRAC programs.

8. **Nonelderly Disabled (Handicapped) Family:**

Considered as Definition I, this is defined as a disabled family where the Head, co-head and spouse, if any, is less than 62 years of age at the time of initial occupancy. This definition is used for the 236, 221(d)(3), and 202/8 programs.

Important Considerations about Verifying Disability:

There are three important points to consider when owners are verifying disability. Let us quickly review them now.

- a. Receipt of Veteran's Administration Disability benefits **does not** automatically qualify an applicant as disabled under the Social Security definition. Persons claiming disability on the basis of receipt of such benefits would have to be able to verify disability in accordance with the definitions.
- b. Because the Disability Status in EIV is not always accurate, owners must not use this status for determining an applicant's eligibility as disabled for a HUD program or for receiving the elderly/disabled household allowances.
- c. The fact that an applicant does not receive Social Security disability benefits **does not** mean that he/she does not qualify as disabled under the Social Security definition. It is possible for a person to qualify as disabled under the definition and not be receiving Social Security disability benefits.

Now let's look at the three definitions of elderly.

1. **Elderly Family:**

Listed as Definition A, this is used to determine eligibility of elderly families in the Section 8 and 231 with Section 8 programs.

2. Elderly Family:

Listed as Definition B – Elderly Family is used to determine eligibility in the 202/8 program.

3. Elderly Person:

Listed as Definition C, an elderly person is defined as a household composed of one or more persons at least one of whom is 62 at the time of initial occupancy. This definition is used in determining eligibility in the 202 PRAC program.

We now will include the above list of definitions by subsidy program, using Figure 3-5 from the 4350.3 REV-1.

Figure 3-5: Applicable Definitions for Elderly and Disability - Determining Project Eligibility Summary		
Type of Project	Definition of Elderly	Definition of Disability
Section 8 New Construction Section 8 Substantial Rehabilitation Section 8 State Agency RHS Section 515/8 Section 8 Property Disposition Set-Aside Section 231 with Section 8	Definition A – Elderly Family	Definition D – Disabled Family Definition E – Person with Disabilities

Section 236 (insured and uninsured) Section 236 (insured and uninsured) with Section 8 Loan Management Set-Aside Section 236 (insured and uninsured) with RAP Section 236 (insured and uninsured) with Rent Supplement Section 221(d)(3) BMIR with Rent Supplement Section 221(d)(3) BMIR with Section 8 Preservation Projects Section 221(d)(3) BMIR (without Section 8)	Note: For Section 236 and 221(d)(3) properties, see Paragraph 3-18 B.	Note: For Section 236 and 221(d)(3) properties, see Paragraph 3-18 B.
Section 202 without rental assistance	Single people aged 62 or older; households the head of which (or the spouse) is aged 62 or more (12 U.S.C. 1701q(d)(4) as added by P.L. 86-372(9/23/59)	None
*Section 202/8 *(see note below)	Definition B – Elderly Family	Definition G – Disabled (Handicapped) Family Definition H – Person with Disabilities (Handicapped person) Definition I – Nonelderly Disabled (Handicapped) Family
*Section 202 PAC	NA	Definition G – Disabled (Handicapped) Family Definition H – Person with Disabilities (Handicapped person)
Section 202 PRAC	Definition C – Elderly Person	NA
*Section 811 PRAC	NA	Definition F – Disabled Household Definition H – Person with Disabilities

*** NOTE:** Under the Section 202/8, Section 202 PAC and Section 811 Programs, project eligibility may be limited to persons qualifying under a specific disability category: persons with physical disabilities, chronically mentally ill individuals, and developmentally disabled individuals.

Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility

(taken from federal regulations as cited at each definition)

Elderly Definitions

Definition A – Elderly Family. [24 CFR 5.403]

Elderly Family. Elderly family means a family whose head or spouse or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

Definition B – Elderly Family. [24 CFR 891.505] Elderly families are:

- (1) Families of two or more persons, the head of which (or his or her spouse) is 62 years of age or older;
- (2) The surviving member or members of a family described in paragraph (1) living in a unit assisted under subpart E of this part (Section 202 loans) with the now deceased member of the family at the time of his or her death;
- (3) A single person who is 62 years of age or older; or
- (4) Two or more elderly persons living together or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well-being.

Definition C – Elderly Person. [24 CFR 891.205] An elderly person is a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.

Disability Definitions

Definition D – Disabled Family. [24 CFR 5.403] A disabled family is a family whose head, spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

(Continued)

Definition E – Person with Disabilities [24 CFR 5.403]. A person with disabilities for purposes of program eligibility:

(1) Means a person who:

(i) Has a disability, as defined in 42 U.S.C. 423;

- (A) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or
- (B) In the case of an individual who has attained the age of 55 and is blind, inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity and over a substantial period of time. For the purposes of this definition, the term blindness, as defined in section 416(i)(1) of this title, means central vision acuity of 20/200 or less in the better eye with use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for the purposes of this paragraph as having a central visual acuity of 20/200 or less.

(ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:

- (A) Is expected to be of long-continued and indefinite duration,
- (B) Substantially impedes his or her ability to live independently, and
- (C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or

(iii) Has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that

- (A) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (B) Is manifested before the person attains age 22;
- (C) Is likely to continue indefinitely;
- (D) Results in substantial functional limitation in three or more of the following areas of major life activity:
 - a. Self-care,
 - b. Receptive and expressive language,
 - c. Learning,
 - d. Mobility,
 - e. Self-direction,
 - f. Capacity for independent living, and
 - g. Economic self-sufficiency; and
- (E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(Continued)

Definition E – Person with Disabilities (continued)

- (2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;
 - (3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and
 - (4) Means person with disabilities (individual with handicaps), as defined in 24 CFR 8.3, for purposes of reasonable accommodation and program accessibility for persons with disabilities.
-

Definition F – Disabled Household. [24 CFR 891.305] Disabled household means a household composed of:

- (1) One or more persons at least one of whom is an adult (18 years or older) who has a disability;
- (2) Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician) to be important to their care or well-being; or
- (3) The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part (Section 811 Capital Advance) with the deceased member of the household at the time of his or her death.

Definition G – Disabled (Handicapped)* Family. [24 CFR 891.505] Disabled (handicapped) family means: **(see note bottom of next page)*

- (1) Families of two or more persons the head of which (or his or her spouse) is a person with disabilities (handicapped);
- (2) The surviving member or members of any family described in paragraph (1) of this definition living in a unit assisted under subpart E of this part (Section 202 loans) with the deceased member of the family at the time of his or her death;
- (3) A single person with disabilities (handicapped person) over the age of 18; or
 - 4. Two or more persons with disabilities (handicapped persons) live together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well-being.

(Continued)

Definition H – Person with a Disability (Handicapped Person).* [24 CFR 891.505 and 891.305] A person with disabilities means:

- (1) Any adult having a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions.
 - (2) A person with a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that:
 - (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - (ii) Is manifested before the person attains age 22;
 - (iii) Is likely to continue indefinitely;
 - (iv) Results in substantial functional limitation in three or more of the following areas of major life activity:
 - A. Self-care,
 - B. Receptive and expressive language,
 - C. Learning,
 - D. Mobility,
 - E. Self-direction,
 - F. Capacity for independent living, and
 - G. Economic self-sufficiency; and
 - (v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.
 3. A person with a chronic mental illness, i.e., a person who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions.
 4. Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of infection with the HIV are eligible for occupancy in the Section 202 projects designed for the physically disabled, developmentally disabled, or chronically mentally ill depending upon the nature of the person's disability. (24 CFR 891.505)
- Note:** A person whose sole impairment is alcoholism or drug addiction (i.e., who does not have a developmental disability, chronic mental illness, or physical disability that is the disabling condition required for eligibility in a particular project) will not be considered to be disabled for the purposes of the Section 202 program.
5. A person infected with the human acquired immunodeficiency virus (HIV) and a person who suffers with alcoholism or drug addition, provided they meet the definition of "person with disabilities" in Section 811 (42 U.S.C) 8013(k)(2). A person whose sole impairment is a diagnosis of HIV positive or alcoholism or drug addiction (i.e., does not meet the qualifying criteria in Section 811 will not be eligible for occupancy in a section 811 project. (24 CFR 891.305)

Definition I – Nonelderly Disabled (Handicapped)* Family. [24 CFR 891.505] A nonelderly disabled (handicapped) family means a disabled family in which the head of the family (and spouse, if any) is less than 62 years of age at the time of the family's initial occupancy of a project.

*** NOTE:** The term *handicapped* appears in a number of regulatory definitions that have not yet been updated to reflect current statutes. In this handbook, HUD replaced *handicapped* with the term *disabled*, *disability*, or *impairment* to reflect current statutes. The parenthetical reference to handicapped indicates that the term handicapped has been replaced with disabled, disability, or impairment in that definition.

4350.3 REV-1
Paragraphs 3-23D
(pg. 3-69)

C. FAMILIAL STATUS AND ITS EFFECT ON ADMISSION

Familial status is one of the categories of protection under Fair Housing. The Handbook states that owners can't discriminate against applicants on the basis of familial status. This means you may not discriminate against households that include a child/children under age 18 living with a parent, guardian, or designee. The prohibition applies to senior housing and family housing.

The familial status protection is also accorded to pregnant persons, regardless whether they have no other children and to persons in the process of securing legal custody of any person who has not attained the age of 18 years.

4350.3 REV-1
Paragraph 3-23D
(1) Pg 3-69

1. ADMISSION OF CHILDREN TO FAMILY HOUSING AND HOUSING FOR THE HANDICAPPED

Paragraph 3-23D(1) states categorically that owners of such housing **may not** discriminate on the basis of familial status. Similarly, owners may not employ or devise policies that have the purpose or effect of excluding children or families with children. Finally, it is up to applicant/participant families to determine whether a given housing project's design, grounds, amenities, or recreational facilities make it a suitable place for children to live. Owners may not make that determination.

4350.3 REV-1
Paragraph 3-23D (3)
Pg 3-69

2. ADMISSION OF CHILDREN TO HOUSING FOR THE ELDERLY

The language in the Handbook regarding the issue of familial status and whether or not owners may exclude families with children under age 18 is now quite clear, whereas in the past it had been somewhat confusing. The regulations now state:

"Owners may not exclude otherwise eligible elderly families with children from elderly properties or elderly/disabled properties covered by this handbook."

4350.3 REV-1
Paragraph 3-22
(pg. 3-67)

D. ELIGIBILITY OF SINGLE PERSONS

HUD does not currently restrict the admissions of single persons to any of the assisted housing programs covered by the 4350.3 REV-1. Paragraph 3-22-B speaks to Section 8 Housing Limited to Single Sex Occupancy. It is a situation encountered infrequently enough that we do not feel compelled to address it here. Read the Handbook to acquaint yourself with the issues involved.

4350.3 REV-1
Paragraph 3-18 (pg.
3-52)

E. ELIGIBILITY FOR SPECIFIC PROJECTS

The format here is for the Handbook to present a particular type or types of housing project in a Paragraph, and then discuss the project's eligible family criteria for its family units, its elderly units, its mobility accessibility units, etc. This is not the type of information you would need to know, necessarily, unless you owned or managed one or more of the types of properties presented here. It is important, though, to have enough skill in use of the 4350.3 REV-1 to be able to find information contained in these Paragraphs.

Rather than go over these Paragraphs exhaustively, we will just mention especially significant points.

4350.3 REV-1
Paragraph 3-18A
(pg. 3-52)

1. OWNER-ADOPTED PREFERENCES FOR ELDERLY, NEAR-ELDERLY, NONELDERLY, DISABLED, AND DISABLED FAMILIES

Title VI-D of the 1992 Housing and Community Development Act allows owners of “*covered Section 8 housing projects*” to implement a selection preference for elderly families. Such housing must be designed primarily for the elderly and the preference applies to:

- a. Section 8 New Construction;
- b. Section 8 Substantial Rehabilitation;
- c. State Housing Agency Programs for New Construction and Sub Rehab;
- d. Rural Housing 515/8; and,

e. Section 8 Property Disposition Set-Asides.

We refer you to the Handbook for the detailed explanation of establishing the preferences for such programs.

4350.3 REV-1
Paragraph 3-18B
(pg. 3-57)

2. OWNER-ADOPTED ELDERLY RESTRICTIONS, FOR CERTAIN ELDERLY HOUSING BUILT WITH HUD ASSISTANCE THROUGH THE SECTIONS 202, 221, AND 236 PROGRAMS

Title VI-D of the Housing and Community Redevelopment Act of 1992, allows owners of Sections 236, 221(d)(3) BMIR, and 202 properties developed prior to 1991, to restrict occupancy to the elderly, **if the housing was originally designed for elderly families (seniors)**. Title VI allows the owner to continue to restrict occupancy to elderly families according to rules, standards, and agreements in effect at the time the housing was developed.

4350.3 REV-1
Paragraph
3-18B(2)(a)
(pg. 3-58)

a. Section 236 (with or without Rent Supplement, RAP, or LMSA), and Section 221(d)(3) BMIR (with or without Rent Supplement)

1. An elderly person or family is defined as a household where the head or spouse is 62 years of age or older.
2. A disabled or handicapped person is defined by using Definitions G, H, and after 1974, Definition I as we examined earlier in this Chapter.

b. Section 202 Direct Loan Program (funded from FY60 through FY64)

1. An elderly person is defined as a single person 62 or older or the household where the head or spouse is 62 or older.

c. Section 202 Direct Loan Program (funded from FY65 through FY74)

1. An elderly person is defined as a single person 62 or older or the household where the head or spouse is 62 or older.
2. In 1965 the definition of elderly was modified to include “handicapped.”
3. Ten percent of the units were designed for persons with mobility impairments for either the elderly or nonelderly.

As a result of these changes in the 202 program to include the definition of handicapped, elderly families qualify for units for the elderly, and the accessible units are available to persons with physical disabilities, of whom the head or spouse must be at least 18 years of age and have a disability requiring the features of the accessible unit.

A person with a disability who does not require an accessible unit may only be admitted if they are elderly. Owners must treat applicants who are elderly and who have disabilities equally.

PROJECT ELIGIBILITY MINI QUIZ

TRUE 1. In order to qualify for the 202 PRAC program, an applicant must be
FALSE developmentally disabled.

TRUE 2. Laura Bevins has applied to the Willow Court, a Section 8 complex, with her
FALSE baby daughter, Ann, age one year.

Because Laura has never married, she qualifies as a single person under HUD's definitions.

TRUE 3. Owners must use the Disability Status in EIV to determine eligibility of
FALSE applicants as disabled.

TRUE 4. Admission of single persons to the Section 8 program is not prohibited.
FALSE

CHAPTER 5 OCCUPANCY STANDARDS

Occupancy standards are discussed in the 4350.3 REV-1, Chapter 3, Section 2, and Paragraph 3-23. HUD's occupancy guidelines are found in Exhibit 3-2.

4350.3 REV-1
Paragraph 3-23
(pg. 3-68)

I. INTRODUCTION

Occupancy standards are the policies that dictate the size of units used to house families of different sizes and compositions. HUD does not prescribe specific occupancy standards. Rather, apartment owners and managers have discretion in devising their own occupancy standards, provided they are administered in a consistent fashion. One of the effects of Fair Housing and 504, though, has been to require owners to exercise more discretion and flexibility when working with families with different unit needs.

HUD does not prescribe specific occupancy standards, and explicitly states that apartment owners have discretion in developing occupancy standards, "as long as the standards don't violate fair housing requirements or contain prohibited policies." For example, owners may not develop occupancy standards that exclude otherwise eligible families with children from elderly properties or elderly/disabled properties covered by the 4350.3 REV-1. Although the Handbook states that owners' occupancy standard must be sound, it does not tell apartment owners what "*sound occupancy standards*," are. However, it has provided some guidance to owners in developing such standards. The following chapter discusses what factors will come into play when putting together such standards for your property.

4350.3 REV-1
Paragraph 3-23
(pg. 3-69)

A. FACTORS STATED BY HUD TO CONSIDER IN DETERMINING UNIT SIZE

The Handbook states the various factors to consider in determining unit size before move-in. If the apartment community cannot accommodate the family, the owner may notify the family in writing of its ineligibility. A family which, based on the number of family members, may qualify for more than one unit size, must be permitted to choose which unit size it prefers. In devising occupancy standards, owners are advised that their standards **must**:

1. Balance the need to avoid overcrowding with the need to make the best use of available space while avoiding unnecessary subsidy;
2. Consider the number of persons in the family;
3. Consider, when it is reasonable to do so, both the number of persons in the household and the relationship and sex of those persons; and,
4. The family's need for a larger unit as a reasonable accommodation.

Owners are not permitted to utilize occupancy standards that deny units to children, in accordance with the Fair Housing Act. An example is a property housing the elderly with an eligible head of household and young child constituting a family. This family may not be considered ineligible for assistance because of a child.

4350.3 REV-1
Paragraph 3-
23E
(pg. 3-69)

B. HUD'S GENERAL OCCUPANCY GUIDELINES

The General Occupancy Guidelines, in the Handbook, make a number of points, the most important of which are summarized here:

1. As a guiding principle, HUD recommends a two person per bedroom standard. This standard may vary, depending upon unit size and bedroom size.
2. Occupancy standards are established to determine the unit size for a family, NOT to make social judgments on a family's sleeping arrangement. The owner may not determine whether persons of opposite sex can share a bedroom or the maximum age at which a child can continue to share a bedroom with a parent or parents.
3. Occupancy standards must comply with all Federal, State and local Fair Housing and Civil Rights laws, tenant/landlord laws and zoning restrictions, and all Equal Opportunity and nondiscrimination requirements.

4. Owners must accurately count the number of family members in order to apply the correct unit size standards. Family members who **must** be included in unit size determination are:

- ❖ All full-time family members;
- ❖ All anticipated children, including:
 - Unborn children;
 - Children in the adoption process;
 - Children in the custody process;
 - Foster children;
 - Children temporarily in a foster home;
 - Children in a joint-custody situation who are present in the household 50% or more of the time; and,
- ❖ Live-in aides; and,
- ❖ Foster adults.

Family members who *may* be included in unit size determination, subject to owner policy, include members who are temporarily in a correctional facility.

Children away at school and home during breaks may also be included in unit size determination.

C. ASSIGNING A SMALLER UNIT THAN REQUIRED

Owners may assign a family to a smaller unit size than the occupancy policies indicate, if the family requests the smaller unit and if the following apply:

1. The family is eligible for the smaller unit based upon the number of family members, and occupancy of the smaller unit will not cause serious overcrowding;
2. Assigning a smaller unit results in a lower rent payment for the occupant in a Section 236 or BMIR property; and
3. The assignment will not conflict with local codes.

D. ASSIGNING A LARGER UNIT THAN REQUIRED

A larger unit than required by the property's occupancy standards may also be assigned to a family if *one* of the following criteria exist:

1. There is no eligible family in need of a larger unit available to move within 60 days, and the family agrees in writing to move at its own expense when a proper size unit becomes available; or
2. A larger size unit is required as a reasonable accommodation due to a family member with a disability.

A single person cannot occupy a two bedroom unit, unless the person:

- ❖ Has a disability and requires a larger unit as a reasonable accommodation;
- ❖ Is displaced and no appropriate unit size is vacant;
- ❖ Is elderly and has verified a need for a larger unit;
- ❖ Are the remaining family member and no unit of appropriate size is vacant?

E. OCCUPANCY STANDARDS AFTER MOVE-IN

After a family moves into a unit, the unit may become overcrowded or underutilized due to a change in family size. Families required to move, in order to achieve compliance with occupancy standards, may reject such a transfer but will have their rent raised to market rent. The family may not be evicted for refusing to move, but may be evicted for failure to pay the market rent.

In situations where there has been a change in family size and the apartment community no longer offers an appropriate unit size, the family may not be evicted or have their assistance terminated. An example from the 4350.3 REV-1 can be found below.

Example - Change in Family Size

Atta and Kumari Gupta live in a 3-bedroom unit at Elmwood Terrace. The Guptas have lived in the unit with their three children for 12 years. However, all of the Gupta children are grown and have moved out of the family. Atta and Kumari Gupta no longer need a 3-bedroom unit and could move into a 1-bedroom unit.

Elmwood Terrace has only 2- and 3-bedroom units. If a 2-bedroom unit becomes available, the owner may require the Guptas to move into the smaller unit, but must not require them to move out of the property. If the owner asks the Guptas to move into a 2-bedroom unit, the Guptas may choose to move into it and continue to receive assistance, or remain in the 3-bedroom unit and pay market rent.

4350.3 REV-1
Paragraph 7-
16B.
(pg. 7-29)

F. PAYMENT OF MOVING EXPENSES

This section of the Handbook doesn't address moving expenses associated with a transfer in relation to compliance with Occupancy Standards. Rather, we turn to Paragraph 7-16B of the Handbook. It doesn't give a firm answer. Rather, it provides that depending on the circumstances of any transfer the tenant "may be" required to pay the costs associated with the transfer.

However, if a tenant is transferred as a reasonable accommodation to a household member's disability, then the owner must pay the costs associated with the transfer, unless doing so would be an undue financial and administrative burden.

OCCUPANCY STANDARDS MINI QUIZ

Marie Gomez, a single applicant who is a wheelchair user, has indicated on her Unit Needs Questionnaire that she needs a 2-bedroom unit to house essential medical equipment, and that a 1-bedroom unit will not be of sufficient size.

- | | | |
|-------|----|--|
| TRUE | 1. | Because Ms. Gomez is an applicant with a disability, the owner must accept her request for a 2-bedroom unit at face value regardless of whether the need for an additional bedroom to house her medical equipment is obvious, and assign her the 2-bedroom unit she has requested. |
| FALSE | | |
| TRUE | 2. | There is nothing in HUD's programmatic requirements or Handbook language that stipulates that a live-in attendant must be assigned his/her own bedroom. |
| FALSE | | |

Dolly Brunson, age 71, has applied for a unit at a 202 elderly complex in which she hopes to reside with her granddaughter Lila, age nine. The manager advised Dolly that there were no other children residing in the high rise, nor any play area or playground equipment on the grounds.

- | | | |
|-------|----|--|
| TRUE | 3. | The manager's information to Dolly about other children in the complex and the lack of play facilities might, in themselves, be considered discrimination on the basis of familial status. |
| FALSE | | |

CHAPTER 6

TENANT SELECTION AND SCREENING

Tenant selection is covered in the 4350.3 REV-1, Chapter 4, Section 1, Tenant Selection Plan. Additional relevant information can be found in Chapter 4, Section 4, Selecting Tenants from the Waiting List.

I. INTRODUCTION

The purpose of applicant screening is pretty obvious -- it is an attempt to select for admission, from among the pool of eligible applicants, those applicants whose past records of tenancy, rent payment history, and behavior toward others indicate that they will be lease-abiding tenants and good neighbors. The flip side of the screening process goal is to identify and reject applicants whose past history indicates a poor prospect of their being lease-abiding tenants.

Applicant screening is not a science, but it is important to remember that applicants can only be rejected on the basis of verified information. Hearsay and unsupported allegations are not sufficient grounds upon which to reject an applicant. Moreover, applicants may only be screened using criteria relating to whether they will be good tenants. For this reason, unrelated questions such as an applicant's religion, membership in a political party, or high school record may not be considered in performing applicant screening. Let's see what the Handbook has to say about screening.

4350.3 REV-1
Paragraph 4-4
(pg. 4-3)

A. TENANT SELECTION PLAN

The HUD Handbook states that owners **must** develop a written plan that sets out the property's eligibility requirements, and income limits for admission. The tenant selection plan must conform to nondiscrimination and equal opportunity requirements.

Owners are also required to include policy language in the tenant selection plan that prohibits admission of applicants who have engaged in drug-related or violent criminal activity. We shall examine these mandatory standards later in this chapter.

B. REQUIREMENTS OF THE TENANT SELECTION PLAN

Tenant selection plans *must* incorporate the elements specified below:

- ❖ Project eligibility requirements
 - Designation for a special population, such as elderly.
 - Policies regarding citizenship
 - Requirement of Social Security Number Disclosure
- ❖ The Income Limits used for the property
- ❖ Procedures on accepting applications and wait list selection
 - Taking applications
 - Use of any preferences
 - Income Targeting requirements
 - Screening criteria
 - Required drug related or criminal activity criteria, including State lifetime sex offender registration check in all states where applicants have resided or using a database that checks against all state registries;
 - Procedures for using EIV Existing Tenant Search; and,
 - Other allowable screening criteria
 - Procedures on rejecting applicants
- ❖ Occupancy Standards
- ❖ Unit Transfers
- ❖ Civil rights and nondiscrimination requirements
- ❖ Opening and Closing of the Wait List
- ❖ Eligibility of students
- ❖ Policies for applying the Violence Against Women Act (VAWA) protections (Section 8 only).

There are also recommended topics. Please see the Handbook.

C. HUD DOES NOT APPROVE THE TENANT SELECTION PLAN

HUD does not normally review or approve a property's Tenant Selection Plan, and is in fact, likely to concern itself with the Plan's language only if applicant/tenant complaints and performance on management reviews would seem to indicate that the property is not being managed in accordance with HUD requirements. In such an instance, HUD might step in and suggest changes to the language (except when owners wish to adopt local or residency preferences). However, if HUD staff becomes aware that a plan fails to comply with applicable requirements, the owner must modify the plan accordingly.

4350.3 REV-1
Paragraph 4-4
(pg. 4-8)

D. VAWA PROTECTIONS

The Tenant Selection Plan and House Rules as applicable for Section 8 subsidy must include language on the protections offered by the Violence Against Women Act (VAWA). Owners must provide:

- The Certification of Domestic Violence, Dating Violence, and Stalking – form HUD-91066; and
- The VAWA Lease Addendum – form HUD 91067.

These policies and procedures must support or assist victims of domestic or dating violence (see Glossary for definitions), or stalking. The policies protect victims and their family members from being denied housing as a consequence of domestic violence, dating violence, or stalking.

As identified in the Tenant Selection Plan, management may choose to accept official reports or records, or signed documentation by professionals providing a service to victims of domestic violence, dating violence, or stalking.

Owners must maintain all documentation pursuant to a person's domestic violence, dating violence, or stalking in a separate file, kept in a separate and secure location.

4350.3 REV-1
Paragraph 4-7
(pg. 4-17)

E. SCREENING FOR SUITABILITY

A required element of the Tenant Selection Plan is the set of screening criteria to be

used by owners in the determination of suitability for residency in the apartment community. The purpose of this screening is to help ensure applicants admitted to a property will be able to comply with the terms of the lease: pay rent on time, not interfere with other people's quiet enjoyment, not engage in criminal activity, maintain the unit in a safe, decent and sanitary manner, and comply with other reasonable rules. The Handbook notes that determinations of eligibility and screening to determine suitability are two separate management tasks; applicants must first be determined eligible (meet income limits and provide specific information (i.e., social security numbers and citizenship), and then be determined suitable for housing after the screening process has been completed.

SCREENING OF LIVE IN AIDES OR OTHER PERSONS TO BE ADDED TO THE HOUSEHOLD

The 4350.3 REV-1 has clarified the issue of screening prospective live in aides and other persons to be added to the household. The language found in the Handbook provides clear guidance in this area:

“Both live-in aides and new additions to the tenant household MUST be screened for drug abuse and other criminal activity, including State lifetime registration as a sex offender, by applying the same criteria established for screening other applicants. ... In addition, owners may apply any other owner established screening criteria to new household members in order to establish suitability for tenancy. Owner established screening criteria may also be applied to live-in aides, except for the criterion regarding ability to pay rent on time because live-in aides are not responsible for rental payments.”

Let's consider how this works in the following example:

Sherrill Baker is a resident at Howell Homes. She has a disability and requires a live-in aide as a reasonable accommodation to be able to comply with the terms of the lease agreement. Sherrill's adult daughter agrees to move into the unit as a live-in aide. Management must conduct screening based on the property's written screening criteria before determining the suitability of the adult daughter.

F. SCREENING FOR DRUG-RELATED AND OTHER CRIMINAL ACTIVITY

HUD implemented regulations governing admission and eviction relating to drug-related and other criminal activity, which took effect in June 2001. These comprehensive regulations are summarized below as we examine the mandatory criteria and discretionary criteria that must be contained in tenant selection plans.

MANDATORY SCREENING CRITERIA

Owners must establish standards that deny applicants admission if:

1. Any household member was evicted in the last three years from federally-assisted housing for drug-related criminal activity unless:
 - The evicted household member has successfully completed an approved, supervised drug rehab program; or
 - The circumstances leading to the eviction no longer exist.
2. Any household member is currently engaged in illegal use of drugs or if the owner has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may interfere with the health, safety and right to peaceful enjoyment of the apartment community by other residents.
3. Any household member is subject to a State sex offender lifetime registration requirement.
4. Any household member if there is reasonable cause to believe that member's behavior may interfere with the health, safety, and right or

peaceful enjoyment by other residents, as a result of abusing alcohol, or as a result of a pattern of abusing alcohol. The criteria must be based on behavior, not the condition of alcoholism or alcohol abuse.

DISCRETIONARY SCREENING CRITERIA

Owners may, at their discretion, adopt as additional screening standards those listed below. If such criteria are adopted, they must be incorporated into the property's written policies, and the behaviors must occur "*during a reasonable time before the admission decision:*"

1. Drug-related criminal activity
2. Violent criminal activity
3. Other criminal activity that threatens the health, safety or right to peaceful enjoyment of the apartment community by residents, or threatens the health and safety of the owner, staff, contractors or agents of the owner.

Regardless of the criteria developed by an owner, it is mandatory that screening be conducted to determine if any applicant household member is a State lifetime sex offender.

Most tenant selection plans already include criteria that address these three items. It is important to note that owners should carefully consider provisions as part of the selection standards. Such provisions include:

1. Exclusion of the culpable household member;
2. Successful rehabilitation for drug or alcohol abuse;
3. Lengthening the mandatory three year prohibition of admission;
4. Reconsidering previously denied applicants; and,
5. Consideration of all facts and circumstances in a decision to deny admission based on screening criteria.

The implementation of any discretionary standards and provisions require consistent application by management staff.

G. PERMITTED SCREENING CRITERIA

4350.3 REV-1
Paragraph 4-7F
(pg. 4-23)

The handbook specifically permits owners to screen for suitability by looking at credit history, rental history, and housekeeping habits. An important screening criterion found in the 4350.3 REV-1 is a minimum income requirement for applicants to 236 or 221(d)(3) BMIR developments, where there is no other form of assistance. Owners may require a minimum amount of income for applicants in order to be able to pay the 236 basic rent or BMIR rent.

Rather than discussing the permitted screening criteria described in the handbook, we will discuss the important points.

1. In rental housing, the cost of screening is charged to the project, not the applicant.
2. There is a requirement that owners must apply their screening criteria uniformly to all applicants. This deserves a bit more explanation as it pertains to applicants' with disabilities. Let's envision the following scenario:

The manager of the Hailey Plaza is performing a home visit at the unit of applicant Darrell Durkin. The unit is both messy and dirty, with dirty dishes and clothes strewn about and cleans dishes and clothes that have not been put away. Mr. Durkin, who is a quadriplegic wheelchair user, informs the manager that he had to fire his housekeeper three weeks previously for stealing from him, and had been interviewing replacements, but had not been able to hire a replacement yet, but anticipated doing so soon. Upon returning to the Hailey Plaza, the manager made a note in Mr. Durkin's file that he would have to be rejected for failing his home visit.

The problem with rejecting Mr. Durkin by applying the same screening criteria that is applied to all other applicants is that people with handicaps or disabilities are accorded the right to reasonable accommodation in the application process by 504 and Fair Housing, a right that is not explicitly granted to any other category of applicant.

Applicants with disabilities or handicaps are thus qualified for additional consideration in the application of rules, policies, practices, or services. As stated in the Handbook:

"It shall be unlawful for an owner/manager to refuse to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford an individual with handicaps equal opportunity to use and enjoy a dwelling unit, including public and common use areas."

In the face of such language, what might be a more *"reasonable"* way of dealing with Mr. Durkin's situation given that the reason he would be rejected is a direct result of his disability? Informing Mr. Durkin that his unit had failed the inspection but rather than rejecting his application, rescheduling a home visit after he had secured a housekeeper would certainly qualify as a reasonable accommodation. Is the Handbook language saying that you may not screen applicants with handicaps/disabilities? NO, but it **is** saying the screening process may involve making reasonable accommodations for applicants with disabilities to achieve a satisfactory prospect of lease compliance.

3. The language on Consideration of Extenuating Circumstances in the screening process also requires some additional thought and discussion. It states:

"Owners may consider extenuating circumstances in evaluating information obtained during the screening process to assist in determining the acceptability of an applicant for tenancy."

This consideration of extenuating circumstances is at the discretion of the owner. If adopted, it must be applied consistently with all applicants.

Once again, the obligation to offer applicants with disabilities a reasonable accommodation would seem to argue for consideration of extenuating circumstances. Consider the following example.

The manager of Montrose Villa decided to reject the application of Willy Byas because Mr. Byas had been evicted for nonpayment of rent eighteen months ago. Mr. Byas requested a meeting to discuss his rejection. At the meeting he stated, *“Look, I know my rent payment record has been bad, but there’s a reason. I was a crack head. When I was evicted I hit bottom and my sister convinced me to enter a treatment program. Since I got out of treatment 15 months ago, I got a job and I haven’t been late on my rent once, check it out. I’m still in an aftercare program and I’m drug tested regularly. I will do everything I can to maintain my recovery. I’ll sign any release you want to check up on what I’m telling you.”*

The manager informed Mr. Byas that it was the policy of Montrose Villa not to consider extenuating circumstances in its screening procedure, and that the rejection would have to stand. Mr. Byas indicated he would contact his attorney about the matter. The meeting ended on that note.

Let’s think about this. If Mr. Byas’ story is true, and he is a drug addict who is not currently using illegal drugs, then he is qualified individual with a disability, and as such, is entitled to consideration of a reasonable accommodation. The manager has not offered an accommodation in this situation. If it turns out he is not an addict or he is a current user, he will not be entitled to an accommodation. However, if the story checks out, he is entitled to a reasonable accommodation, which in this case is consideration of mitigating circumstances.

Some owners and managers may feel leery about offering such consideration of extenuating circumstances to applicants with disabilities, but not to all other applicants. If you share this concern, a simple way to achieve both and be consistent is to incorporate extenuating circumstances into the screening process. We would contend that you are on much sounder ground in so doing than if you choose not to consider extenuating circumstances for anybody.

H. IMPORTANT THINGS TO KEEP IN MIND REGARDING PERMITTED SCREENING CRITERIA

1. Credit References: you may reject an applicant for poor credit history but not for lack of a credit history.
2. Rental History: you may reject an applicant for poor rental history but not for lack of a rental history.
3. Housekeeping History: you may reject an applicant for clearly defined standards that can be equally applied. It is a good rule of thumb to focus on deficiencies that fall under health, safety, building, or fire code violations or hazards. If visiting an applicant's current home is part of the owner's screening practices, the owner must visit the homes of all applicants unless the owner has established a geographic radius within which home visits are made.

4350.3 REV-1
Paragraph 4-8
(pg. 4-25)

I. PROHIBITED SCREENING CRITERIA: Two of those cited, require some discussion.

1. PHYSICAL EXAMINATIONS: the two most important points made are: 1.) that owners may not require physical examinations or medical testing as a condition of admission, and 2.) that "*Persons with handicaps may meet the requirements of the lease with the assistance of others, such as attendant care providers.*" In the past, one of the criteria often used in the screening process was "*ability to live independently.*" In the post-504/Fair Housing world, "*ability to live independently*" is no longer permissible criterion to employ in the screening process.
2. DISABLED STATUS: owners may make inquiry into an applicant's disability status only insofar as it is necessary to determine an applicant's eligibility to live in a complex or a particular unit. If the person is applying for housing designated for individuals with disabilities, you may ask the person to document that he/she has a disability. If the person is applying for a unit with a special features designed to assist persons with specific disabilities, you may ask the applicant to verify through a qualified individual that his/her condition warrants the special features. Unless the person is applying for

housing designated for individuals with a particular type of disability, such as AIDS, you may not inquire about the nature or severity of a person's disability so long as you have information sufficient to determine eligibility according to the program's standards.

J. UNIT NEEDS QUESTIONNAIRE

Some owners include a Unit Needs Questionnaire with the application packet, which provides applicants with an opportunity to identify any accessible unit features they require. Such a questionnaire, though, should make it clear that submission of the information is on a voluntary basis and those applicants can choose not to answer such questions. A person does not have to reveal he/she has a disability.

K. NON-DISCRIMINATION

The language on nondiscrimination is pretty straightforward. It should be mentioned that - to the extent that a particular housing program is designed specifically to assist elderly or handicapped persons - it may discriminate against other applicants who do not fall into those eligible categories. Owners must comply with all applicable federal, state or local fair housing and civil rights laws and with all applicable civil rights related program requirements.

TENANT SELECTION AND SCREENING MINI QUIZ

- TRUE 1. An owner must deny admission to an applicant who is subject to a lifetime State
FALSE sex offender registration requirement.

The Morissey Arms is located on a steep hill. At the application interview of Betty Bruno, age 58, the manager noted that Mrs. Bruno uses a walker to get around. He asked her how long she had used it and whether she would be able to walk without it in the future. Mrs. Bruno informed the manager that she has had to use the walker ever since an auto accident 17 years ago, and that she assumed she would always need it. The manager rejected Mrs. Bruno's application for fear that she might take a fall on the steep project site and sue the owner.

2. Assess the manager's performance here. Would you have taken the same actions? If not, why not?

- TRUE 3. An applicant to a BMIR property may be required to meet the minimum income
FALSE requirement established in the selection and screening procedures.

- TRUE 4. An applicant with no rental history must always be rejected.
FALSE

CHAPTER 7

TAKING APPLICATIONS AND ADMISSION PREFERENCES

Taking applications is presented in Chapter 4, Paragraph 4-14. Admission preferences are discussed in the 4350.3 REV-1, Paragraph 4-6.

I. INTRODUCTION

Accepting applications and utilizing admission preferences are used to determine the order in which eligible applicants are to be selected from the waiting list. Project owners are required by law to give a preference to certain classes of applicants. Owners can also initiate property specific preferences as well. A preference places a person higher on the waiting list than non-preference holders, even if the latter submitted their applications first. Housing providers must make sure that applicants are informed of the admissions preferences in effect at a property and that information on the preferences is available in accessible formats for applicants with disabilities. Qualification for an admission preference **does not** automatically make an applicant household eligible. For example, an over-income applicant family that has been involuntarily displaced from their home by a flood is still ineligible for assistance. Why? Because they are income ineligible. The following chapter explains the types of applications available and the recommended contents, as well as a review of preferences and how they apply.

4350.3 REV-1
Paragraph 4-14A
(pg. 4-34)

A. APPLICATION REQUIREMENTS

Persons wanting housing assistance must fill out an application, and owners of assisted housing must accept applications from all interested persons, except during periods when the waiting list is closed.

1. PRE-APPLICATION

For assisted housing in which applicants will have to spend some time on the waiting list before being admitted/rejected, it is permissible for housing owners to employ a pre-application which collects enough information to make a preliminary assessment of

an applicant's eligibility/admissions preference status. In instances where a complex has vacancies to fill, the completed application would be filled out when the applicant first expressed interest in housing.

2. CONTENTS OF AN APPLICATION/PRE-APPLICATION

A content of an application/pre-application are not explicitly stated, nor is there a required application form provided in the 4350.3 REV-1. Whatever form an owner uses must solicit enough information to determine an applicant family's eligibility for assistance and preference status, so that the family's waiting list placement can be determined. The application should collect enough information to determine the size/sizes of unit in which the family may be housed. All information employed in the project's applicant screening process should be collected, as well. Finally, to determine if Affirmative Fair Housing Marketing goals are being met, the marketing sources should be collected. Applicants provide self certifications of their race and ethnicity by using form HUD 27061-H, found in Exhibit 4-3. Completing the form is optional and there is not penalty for not completing it. If the applicant chooses not to self certify, a notation should be made accordingly and placed in the applicant's file.

B. CONTENTS OF THE APPLICATION

Applications should be designed in such a way so as to collect the following information in order to make an initial determination of eligibility:

- ❖ Household characteristics and contact information;
- ❖ Identification of any applicable preferences;
- ❖ Sources and estimates of household income and assets;
- ❖ Citizenship declaration and consent forms (in appropriate programs);
- ❖ Marketing information; and,
- ❖ Screening information.

Further, the application must request the following information:

- Whether any member of the applicant household is subject to a State lifetime sex offender registration requirement in any state;
- List of states where applicant household members have resided;
- Disclosure of SSNs for applicant household members, except those who do not

contend their eligible immigration status;

- Information from applicants age 62 or older as of 1/31/10 and who do not have a SSN, if they were receiving HUD assistance at another location on 1/31/10; and
- The form HUD-92006, Supplement and Optional Contact Information must be attached to the application.

C. SUPPLEMENT TO APPLICATION FOR FEDERALLY-ASSISTED HOUSING

As mentioned above, it is mandatory for owners to provide the form HUD-92006, Supplement and Optional Contact Information, as an attachment to the application. Applicants have the option to complete the form, providing one or more emergency contacts and identifying the reasons for contacting those persons or organizations listed. At move in, owners should provide new residents an opportunity to update the form. After admission, residents should continue to be afforded the chance to update the form as part of the annual recertification process.

Owners may only contact the persons or agencies listed on the 92006 for the reasons specified on the form. If the applicant does not move in, the form should be kept with the application for three years. If the applicant does move in, the form should be maintained in for the term of tenancy and three years thereafter.

D. TAKING APPLICATIONS AND 504/FAIR HOUSING

There are special considerations pertaining to taking applications from persons with disabilities, and the non-discriminatory requirements of 504/Fair Housing. Owners must accommodate persons with disabilities who, as a result of their disabilities, cannot utilize the owner's preferred application process by providing alternative methods of taking applications.

1. ASKING AN APPLICANT IF HE/SHE HAS A DISABILITY IS GENERALLY NOT PERMITTED, BUT THERE ARE EXCEPTIONS

The general rule is you CAN'T ask a person if he/she has a disability, about the nature or severity of a disability, or any question that would require him/her to waive or disclose a medical condition or medical history. Nor can you ask whether any member of the applicant's family or any friend or associate has a disability.

2. EXCEPTIONS

There are some exceptions to the general rule that a housing provider can't ask whether an applicant has a disability, or a question that would necessitate the person revealing a disability or the nature or severity of a disability:

- a. If the person has applied for housing designated for individuals with disabilities or a certain type of disability, you may ask the person if he/she has a qualifying disability. Unless the person is applying for housing designated for individuals with a particular type of disability, such as AIDS, you may not inquire about the nature of a person's disability so long as you have information sufficient to determine eligibility according to the program's standards. A person is not obligated to reveal that he/she has a disability, but a person who chooses not to reveal his/her disability would not be able to establish eligibility for a reasonable accommodation.
- b. If the person is applying for a unit with a special feature designed to assist persons with specific disabilities, you may verify through a qualified source that his/her condition warrants the special features unless the disability is known or obvious.
- c. If an applicant requests that you provide reasonable modifications or accommodations, you may verify he/she has a disability and the need for the requested accommodation unless the disability and/or the need for the accommodation/modification is obvious. You cannot ask the person any questions about the nature or severity of his/her disability except as it relates to the specifics of an accommodation.
- d. If during the screening process, negative information is revealed about a person's past tenancies; you can ask the person to explain the negative information. The explanation may require the person to reveal information about the existence, nature or severity of his/her disability. The person may still decide not to say anything about the disability.

That is the person's right. You, however, have the right to reject a person for unexplained negative information.

REASONABLE ACCOMMODATION

Reasonable accommodation and the provision of auxiliary aids must be made in the application intake process for applicants with disabilities unless doing so would change the nature of the program or impose an undue financial and administrative burden. A disability in this context is the civil rights definition contained in 504 (a physical or mental condition which substantially limits a major life activity).

Assisted housing owners are required to communicate with persons with disabilities in ways that make the information accessible. Thus, a blind applicant might require someone from the housing management staff to read the questions on the application and fill out the answers. Similarly, an interview with an applicant who is deaf may require the use of a Manual Sign Language interpreter.

THE REQUIREMENT THAT AN APPLICATION BE FILLED OUT

Although an application must be filled out for each applicant, this requirement **may not** be used as a means of excluding applicants with disabilities who require assistance to fill out the application. Some applicants may not be able to read or comprehend written materials due to cognitive disabilities. Other applicants may lack the coordination to control a writing implement and enter answers on an application form. To the extent that persons with disabilities, interested in applying for assisted housing, need help to understand and fill out the application, management is obligated under 504 and Fair Housing to offer help up to the point of undue financial and administrative burden.

E. PRIORITIZING PREFERENCES:

The Handbook sets forth, in descending order the priorities of the various admission preferences available to applicants. This means that applicants who have a subordinate preference can't obtain housing before an applicant who has a higher-ranking preference. Ranked from highest priority to lowest priority, they are as follows:

4350.3 REV-1
Paragraph 4-14
(pg. 4-34) and
Paragraph 4-6
(pg. 4-12)

1. Program-specific preferences required by statute;
2. Preferences based upon HUD programmatic regulations; and,
3. Property-specific preferences initiated by an owner.

The chart on the next page, taken from the 4350.3 REV-1, details each of the preference categories according to the subsidy program in which it applies.

Figure 4-3: Summary of Preference Requirements by Property Type

Program	Statutory Preferences - Displacement	HUD Regulatory Preferences	Owner-Adopted Preferences
Section 221(d)(3) Section 221(d)(3) BMIR Section 221(d)(4)	✓ ✓ ✓		
Section 236		✓	
Section 8			
New Construction			✓
Substantial Rehabilitation			✓
State Housing Agency			✓
New Construction or Sub Rehab			✓
Rural Housing 515/8			✓
Property Disposition Set-Aside			✓
Section 202/8			✓
Loan Management Set-Aside (LMSA)			✓

Those applicants awaiting rental assistance in the 221(d)(3), (d)(3) BMIR, and (d)(4)

programs who have been displaced by a government action, or a presidentially declared disaster, such as a tornado, receive a statutory preference for admission over other applicants.

This having been said, an example may help clarify the different scenarios you may encounter in determining the order in which applicants with different preferences will be taken off of the waiting list.

EXAMPLE:

Minnie Doran applied to the Fremont Plaza on March 5, 2006. Minnie has been verified to qualify for a HUD approved residency preference in effect at the Fremont Plaza, which is a 221(d)(3)(BMIR) project. Chris Wheeler applied to the Fremont Plaza on December 17, 2007. Chris, who has been living downstate, was recently displaced by Hurricane Alma, a federally recognized disaster, and has submitted verification to that effect.

Who should be offered a unit first? Chris.

Why? Because the 221 housing program offers a statutory preference, the highest category of preference, to applicants who are displaced.

The highest level of preference that Minnie qualified for was an owner -adopted preference.

F. REGULATORY, STATE AND LOCAL PREFERENCES:

The regulatory preferences established by HUD include those given to applicants to 236 properties who have been displaced by government action or a presidentially declared disaster.

In Section 236 properties that also offer rental assistance through the RAP Program,

owners must rank applicants according to the following criteria.

1. Applicants those are eligible for RAP assistance.
2. Applicants eligible to pay less than market rent under the Section 236 program.
3. Applicants with income sufficient to pay the market rent approved for the property. (See paragraph 3-8 for a discussion of the limitations on renting to over-income applicants.

NOTE: These ranking criteria are secondary to the preferences regarding displacement.

State and local preferences may also be part of a property's preference plan, provided such laws are consistent with HUD criteria and meet civil rights requirements. In cases where state and local laws creating preferences exist, the owner must receive HUD approval to adopt such preferences in their policies and procedures.

G. OWNER PREFERENCES

Any owner established preferences must be subordinate to statutory and regulatory preferences. Among the types of owner preferences are:

1. Residency Preference – must be approved by HUD
2. Working Families Preference – (you must provide exceptions for elderly families and households that include a disabled family member)
3. Disability Preference – but not for a specific type of disability, unless specified in the subsidy program (i.e., 811 property)
4. Victims of Domestic Violence, Dating Violence, or Stalking Preference
5. Designated Groups of Single Persons – such as elderly, homeless, or displaced

WEIGHTING OWNER-ADOPTED PREFERENCES

The Tenant Selection Plan must specify what type of weighting or ranking approach the property will use in applying any owner-adopted preferences.

APPLICATION AND ADMISSION PREFERENCES MINI QUIZ

TRUE 1. Only applicants with disabilities need to be informed that the owner does not
FALSE discriminate on the basis of disability in the management of the project.

TRUE 2. It is not permitted to ask on the application to a Section 8 New Construction
FALSE family complex, for the purpose of determining program eligibility, if the head or spouse has a disability.

Applicant Miranda Stone had already spent an hour and a half filling out the application to Kennedy Plaza and it was the close of the workday. The manager told Miranda she would have to submit the application *“as is.”* When Miranda complained she had not been able to complete the application because she didn’t understand some parts of it, the manager told her, *“Look you have to be able to complete the application to live here, and I am not permitted to help you.”*

TRUE 3. The manager was correct in her assessment that applicants must be able to
FALSE complete the application without assistance.

TRUE 4. The form HUD-92006 should only be made available to applicant households
FALSE at the time of application.

CHAPTER 8

INCOME TARGETING REQUIREMENTS

Income targeting is covered in the 4350.3 REV-1, Chapter 4, Paragraph 4-5. Additional relevant information can be found in Chapter 3, Paragraph 3-7F, Exceptions to Section 8 Income Targeting Requirements, as well as Paragraph 4-25.

INTRODUCTION

HUD's income targeting requirements affect properties with project-based Section 8 assistance. Income targeting requirements do **not** apply to the 202 PAC, 202 PRAC, 811 PRAC, RAP, Rent Supplement, Section 22(d)(3) BMIR or 236 programs. The regulations mandate that owners must provide not less than 40% of the available units in a fiscal year to families who have extremely low income (defined as 30% of the area median income). It is worth noting that the 4350.3 REV-1 clarifies that both move ins and initial certifications of in-house residents be counted in complying with the 40% income targeting goal. There is no required procedure to achieve this goal; however the Department does offer suggested approaches for owners to consider in gaining compliance. The adopted procedure must be specified in the written Tenant Selection Plan. This chapter presents an overview of the income targeting requirements.

A. INCOME TARGETING METHODS

4350.3 REV-1
Paragraph 4-5
(pg. 4-10)

The first step in determining the best approach for an apartment community to choose in the implementation of income targeting methods is to review the waiting list. This review will give management insight as to the number of existing applicants on the waiting list who are extremely low income. Based on the waiting list review, a property may find it will satisfy the income-targeting requirement of 40% without any extra marketing strategy or selection procedures.

Should the wait list indicate that there are an insufficient number of applicants to attain the income targeting requirement; the owner is advised to analyze the average turnover rate for the past two years. The results will equip the owner with good information on an estimated annual number of vacancies for the year.

Upon completion of the information gathering, the best choice for the property can then be made regarding the income targeting methods. Among the options available are:

1. Admit all extremely low income applicants until the 40% goal is met;
2. Alternate between extremely low applicants and applicants on the top of the list – this permits “skipping” over higher income applicants; or,
3. Alternate between four extremely low income applicants and then the next six applicants at the top of the waiting list.

4350.3 REV-1
Paragraph 3-7F
(pg. 3-15)

B. EXCEPTIONS TO INCOME TARGETING REQUIREMENTS

In some situations the owner will have exhausted all good faith efforts to market the property to extremely low income families. HUD has afforded owners the opportunity to rent to other applicants on the waiting list in such cases, provided thorough documentation exists to show the marketing steps taken by the owner.

The 4350.3 REV-1 sheds light on the good faith effort required by owners. Let’s look below at the language found in Chapter 4, Paragraph 4-25F:

“To market adequately the owner must, at a minimum, advertise in the locality...serving the extremely low income population for no less than 30 days. If, after that period of time, the owner is unable to attract eligible extremely low income applicants, the owner may admit other eligible families. The owner must continue to advertise to extremely low income applicants.”

Let’s consider an example, which describes how an owner can admit other than extremely low-income families.

The manager at Spellwood Manor, a Section 8 apartment community, has been advertising consistently in the local newspapers and been in contact with groups in the community to promote affordable apartments. She has exhausted her waiting list of extremely low income applicants, and despite the two month long marketing effort, has been unable to generate applications from families with extremely low incomes. The manager, to avoid increasing vacancies at Spellwood,

offers the next two bedroom apartment available to the family at the top of the two-bedroom waiting list, who is very low income.

Sound waiting list management practices combined with excellent documentation pave the way for successful compliance with the income targeting requirements.

INCOME TARGETING MINI QUIZ

TRUE 1. An 811 property must comply with HUD's income targeting requirements.

FALSE

TRUE 2. Owners are not permitted to "skip" higher income applicants in order to select an extremely low-income applicant.

FALSE

CHAPTER 9 REJECTING APPLICANTS

Rejecting applicants is covered in 4350.3 REV-1, Chapter 4, Section 1, Paragraph 4-9.

I. INTRODUCTION

In making a determination that an applicant is to be rejected, owners must not discriminate on the basis of race, color, religion, sex, national origin, familial status or disability.

A. GROUNDS FOR REJECTING APPLICANTS

4350.3 REV-1
Paragraph 4-9B
(pg. 4-27)

Applicants will be rejected in the following cases:

1. If ineligible for occupancy in a particular unit or property;
2. Is unable to disclose and document SSN's of all house hold members, except for those household members who do not contend eligible immigration status or tenants who were 62 or older on 1/31/10, whose initial determination of eligibility was begun before 1/31/10.
3. Does not sign and submit verification consent forms or the Authorization for Release of Information (forms HUD 9887 and HUD 9887-A.)
4. Has household characteristics that are not appropriate for the specific type of unit available at the time, or has family of a size not appropriate for the unit sizes that are available.
5. Includes family members who did not declare citizenship or non-citizenship status (see paragraph 4-31).

4350.3 REV-1
Paragraph 4-9B(4)
(pg. 4-27)

Note: Instances in which an applicant household might be denied admission to particular units of inappropriate design or size and placed on a project's waiting list is not the same thing as rejecting an application because the applicant may still be admitted to the project.

6. Does not meet the owner's tenant screening criteria.

4350.3 REV-1
Paragraph 4-9C
(pg. 4-27)

B. PROCESSING REJECTIONS

Typically, applicants are put on the waiting list on the basis of a preliminary assessment of their eligibility and preference status, as expressed in the information recorded on their application. The verifications of eligibility and preference status will be performed at the point at which the applicant reaches the top of the waiting list. Only at that point will a decision be made to accept or reject the applicant. Because the average wait on a waiting list is so long (sometimes in excess of one year) it makes little sense to verify all information before placing a family on the waiting list, since some of the information will not be valid and up-to-date at the time a family reaches the top of the waiting list.

C. THE FOLLOWING INFORMATION REGARDING THE REJECTION NOTICE IS STIPULATED BY THE HANDBOOK:

Rejection letters must be in written form. The rejection letter must include:

1. The specifically stated reason(s) for the rejection
2. The applicant's right to respond to the owner in writing or request a meeting within 14 days to dispute the rejection and
3. That persons with disabilities have the right to request reasonable accommodations to participate in the informal hearing process

D. OTHER RECOMMENDED CLAUSES

You may want to consider including two other clauses in the rejection notice:

1. a *"right to due process"* statement advising the applicant –
"If you believe you have been discriminated against illegally on the basis of race, color, religion, sex, handicap/disability, familial status, or national origin, age or membership in a protected class, you have the right to pursue legal redress in a court of law."

There is no requirement that such a statement is included in the rejection notice, but it may be of some value as an expression of good faith if the decision to reject ever ends up in court.

2. Inform all applicants that if the reason he/she is being rejected is as a result of his/her disability, you will consider mitigating circumstances as a form of reasonable accommodation and provide any reasonable accommodation that would enable an applicant to be lease compliant, as required by Fair Housing and 504.

Because civil rights laws prohibit inquiry into an applicant's disability status except as it pertains to program or unit eligibility (or may be volunteered to qualify for allowances used in rent calculation), it is entirely possible that you have gotten this far in the application process without being aware that an applicant has a disability. Thus, the reasonable accommodation language should always be included in your rejection notice, and not just added on to rejections sent to applicants you already know to have a disability.

As with all communications with applicants, tenants and employees, the rejection notice must be presented in accessible formats where necessary.

4350.3 REV-1
Paragraph 4-9D
(pg. 4-28)

E. MEETINGS WITH APPLICANT OR REVIEW OF APPLICANT'S WRITTEN RESPONSE

Paragraph 4-9D states:

"Any meeting with the applicant to discuss the applicant's rejection must be conducted by a member of the owner's staff who did not make the initial decision to deny admission or assistance."

In a large housing management operation the meeting or review might be conducted by the supervisor of the person who had made the decision to reject the applicant. Any such meeting must be conducted in an accessible location, as necessary.

F. TIME FRAME IN WHICH OWNER MUST RESPOND TO AN APPLICANT'S APPEAL OF A REJECTION

The turnaround time stipulated for an owner's response to an applicant's appeal of a rejection is quick -- five business days in which to produce a written final decision. We recommend holding on to such records for at least three years, but in any case until a management review or Equal Opportunity audit has been performed.

REJECTING APPLICANTS MINI QUIZ

- | | | |
|-------|----|--|
| TRUE | 1. | Management has five business days after an appeal to issue a final written decision to the applicant. |
| FALSE | | |
| TRUE | 2. | It is permissible to perform rejection of applicants over the phone. |
| FALSE | | |
| TRUE | 3. | In a 236 complex with 75% of the units assisted with Loan Management Section 8 Set-Asides, it is possible that an applicant might be income eligible for one of the unassisted 236 units, but ineligible for Section 8 assistance. |
| FALSE | | |

CHAPTER 10

THE AFFIRMATIVE FAIR HOUSING MARKETING PLAN AND WAITING LIST MANAGEMENT

Marketing is discussed in the 4350.3 REV-1, Chapter 4, Section 2, Marketing, and a sample Affirmative Fair Housing Marketing Plan (HUD Form 935-2A) is included as Appendix 1 of the 4350.3 REV-1. The waiting list is covered in the 4350.3 REV-1, Chapter 4, Section 3.

I. INTRODUCTION

The 4350.3 REV-1 provides information regarding the requirements of the Affirmative Fair Housing Marketing Plan and waiting list management. In this chapter we shall examine both topics, focusing on the key aspects of the Affirmative Fair Housing Marketing Plan and the requirements for placing applicants on a waiting list, what they must do to stay on the waiting list and when the waiting list may be closed. It does provide clarification on how the waiting list should be closed and re-opened. We will begin with a discussion of the Affirmative Fair Housing Marketing Plan.

4350.3 REV-1 **A. THE AFFIRMATIVE FAIR HOUSING MARKETING PLAN**
Paragraph 4-12
(pg. 4-29)

Marketing of HUD-assisted housing units, in the general sense, is not addressed in the 4350.3 REV-1. Rather, specific requirements pertaining to Affirmative Fair Housing Marketing Plans and special marketing requirements for some Section 8 units are discussed. An Affirmative Fair Housing Marketing Plan (AFHMP) is required of each multifamily property built or substantially rehabilitated after July 1972. The Plan is "*... designed to promote equal housing choice for all prospective tenants regardless of race, color, religion, sex, disability, familial status, or national origin.*" Note that the plan is not required to market to prospective tenants on the basis of age. The means by which the AFHMP seeks to achieve its goal of equal housing choice is by targeting a marketing effort, directed at applicants who, because of the project's design, or the racial/ethnic make-up of its tenant population, or the surrounding neighborhood, are least likely to apply for housing at the project. Once applications

have been secured (one would hope from a broad cross section of people of different races, colors, religions, sexes, and national origins, and disabilities), admissions are granted on a nondiscriminatory basis, as per Fair Housing. Owners are required to review their Marketing Plan every five years and adjust their strategy if necessary.

4350.3 REV-1

Paragraph 4-
12C

(pg. 4-30)

B. SPECIAL MARKETING REQUIREMENTS

The Handbook stipulates special marketing requirements for Section 8 units, those Section 8 New Construction and Substantial Rehabilitation units not designed for the elderly or disabled, and for 202 and 811 PRAC properties. Let's examine the PRAC special marketing requirements below:

- ❖ Owners must begin marketing activities 90 days prior to the opening of the property; and,
- ❖ Owners must give a list of leased and unleased units to HUD at the time of PRAC execution.

C. MARKETING AND 504

Apart from the AFHMP and special Section 8 marketing requirements, it is very important to be aware that 504 imposes requirements in its communications section that all advertising, informational brochures and the like that HUD-assisted housing owners use to attract prospective residents must be presented in formats that will make the information accessible to persons with differing types of disabilities.

1. EXAMPLE OF MARKETING, FAILING TO COMPLY WITH 504

An apartment owner always found it sufficient simply to advertise his/her vacant units in the want ads of the local newspaper as his/her only means of advertising. A newspaper ad is not accessible to visually impaired persons who might be potential applicants or persons with cognitive disabilities who cannot process written language.

How then, might advertising be formatted that could reach visually impaired persons or persons with cognitive disabilities? Advertising on radio and/or television would

probably suffice by transferring the information to a sound medium that did not depend on a person's ability to see or read to get the message across.

One effective way of getting information to prospective applicants with different types of disabilities is to contact advocacy groups or organizations working with and on behalf of such persons. Throughout the country there are many organizations that serve people who are visually impaired, hearing impaired, have psychiatric disabilities, or other types of disabilities.

2. LIMITATIONS IN COMPLYING WITH 504

What limitations, if any, are placed on the actions owners must take in order to achieve compliance with 504's goals pertaining to communication and advertising? Owners are not required to take actions that would result in either a fundamental alteration of their housing program (change the basic parts of the housing program) or undue financial and administrative burdens (cost too much money and result in an unfair workload). However, owners **would be** expected to take any appropriate action up to the point at which fundamental alteration or undue burdens result. In other words, choosing not to do anything is rarely an option; some action is usually expected and required. (The 504 regulatory language makes this even clearer than does the 4350.3 REV-1 language).

It is very difficult to see how accessible advertising could be a fundamental alteration of a housing program, so it appears that the only legitimate basis for not engaging in a particular type of accessible advertising is that it would result in undue financial and administrative burdens. Owners/managers wishing to claim undue burdens as the reason for not taking action have to have solid documentation in support of their decisions.

4350.3 REV-1 D. CREATING WAITING LISTS

Paragraph 4-16

(pg. 4-39)

You must create a waiting list(s) to ensure that applicants are appropriately and fairly selected for the next available unit. The waiting list must include the following data from the application:

- 1) Date and time the applicant submitted an application;
- 2) Name of Head of Household;
- 3) Annual Income Level (to estimate levels for income-targeting;
- 4) Identification of the need for an accessible unit; including the need for accessible features;
- 5) Preference status; and
- 6) Unit size

Information gathered on the application regarding race/ethnicity, gender and family size should not be put on the property waiting list(s). It isn't relevant to selection, and might result in discrimination against some applicants.

E. SORTING YOUR WAITING LIST

How should you sort your waiting list? It makes the most sense to sort the waiting list by bedroom size so that when you experience a vacancy at your complex you will have a list of persons needing that size of unit readily available. Within each bedroom size sort, applicants will be additionally sorted in accordance with their preference status. Remember, to the extent that a family may legitimately be housed in two different sized units in accordance with your occupancy standards, there is nothing that would prohibit you from placing the household on the waiting list for both unit sizes. They might end up being housed sooner as a result.

F. OPENING AND CLOSING THE WAITING LIST

The Handbook informs us that the waiting list may be closed if the waiting period is excessive (e.g. more than one year). There are specific instructions provided in the 4350.3 REV-1 that owners must follow in both closing and re-opening the waiting list. Those instructions are presented below.

CLOSING THE WAITING LIST

If the average wait is excessive (e.g. more than one year), the waiting list may be closed. When preparing to close the waiting list, the owner must provide written notice in a publication likely to be read by potential applicants, giving the reasons for closing the list.

RE-OPENING THE LIST

Upon the decision to re-open the list, the owner is required to again provide public notice, along with detailed information regarding the procedures for applying and order of processing the applications.

If the Owner conducts preliminary screening and determines an applicant is eligible, but SSNs have not been disclosed and verified for all applicant household members, the owner must place the applicant on the wait list and notify the applicant when a vacancy occurs. The applicant household may not be admitted however, until all SSNs have been disclosed and verified.

4350.3 REV-1
Paragraph 4-
16D
(pg. 4-41)

G. OWNERS CAN REQUIRE APPLICANTS TO CONTACT THE PROPERTY EVERY SIX MONTHS

The Handbook makes it permissible for owners to require applicants to contact the property every six months in order to keep their applications on the waiting list. This approach has the advantage of requiring the applicant to take some initiative on his/her own behalf, and permits the waiting list to operate in a self-culling fashion. However, if you wish to adopt such a policy, it must be:

1. Written into your Tenant Selection Plan, and
2. Announced to all applicants, in writing and other accessible formats for applicants with disabilities/handicaps who need alternative formats, at the time of application intake, with an explanation of the policy and an indication of the next two or three dates at which the applicant should contact the property to retain his/her place on the waiting list.

Many owners who employ this policy extend the additional courtesy of contacting applicants who do not get in touch at the 6-month date, sending a post card to their address stating,

"We have not heard from you in the past six months. If you are still interested in a housing unit at the (name of project), please contact us by (reasonable date, five working days). You may contact us by mail at (address) or call us at (phone number). If we have not heard from you by (date stated above) we will remove your name from the waiting list."

Remember, too, that if you employ this "reminder" post card, the same information must be communicated in an accessible format to applicants with disabilities who are affected by the policy. Also remember that if you include your telephone number you also need to include your TTY number or the number of the other effective means of communication that you use, such as a Relay Service.

H. CHANGES TO THE WAITING LIST

4350.3 REV-1
Paragraph 4-18
(pg. 4-43)

Any changes to information on the waiting list, or status of an applicant, must be noted on the waiting list. The management staff is responsible to develop procedures for maintaining documentation for such changes to applicant information. An owner may choose to maintain either a manual or electronic waiting list.

Should the applicant experience a change in household size, s/he is required to report the changes in accordance with the property's policies. The household may be assigned to a different bedroom size, but may keep their original application date, if permitted by the written policies of the development.

REMOVING AND REINSTATING APPLICATIONS ON THE WAITING LIST

The Tenant Selection Plan must specify the grounds for removal of applications from the waiting list. Among the reasons for withdrawing an application include:

- ❖ Applicant is no longer eligible;
- ❖ Applicant fails to respond to written notices; or
- ❖ Mail sent to the applicant's address is returned as undeliverable.

- ❖ Applicant is offered and rejects two units in the property
- ❖ The unit that is needed-using family size as the basis-changes and not appropriate unit size exists in the property.
- ❖ Applicant fails to provide verified SSN's for all household members.

In the case where an application was mistakenly removed from the waiting list, the applicant must be reinstated at the original place on the list.

WAITING LIST MANAGEMENT MINI QUIZ

- | | | |
|-------|----|---|
| TRUE | 1. | Owners must provide written public notice of their intention to close a property's waiting list. |
| FALSE | | |
| | | |
| TRUE | 2. | Any applicant who was mistakenly removed by management from the waiting list must have the application reinstated regardless whether the applicant requests such reinstatement. |
| FALSE | | |

CHAPTER 11

SELECTING RESIDENTS FROM THE WAITING LIST

Information on selecting residents from the waiting list can be found in Chapter 4, Section 4, beginning at Paragraph 4-23. Exhibit 4-1 contains a list of documents that owners may ask applicants to bring to the interview.

I. INTRODUCTION

The 4350.3 REV-1 describes in Section 4 of Chapter 4 the procedures and requirements owners must follow in selecting residents from the waiting list. Presuming that an initial determination of eligibility has been made, and thorough screening has been completed, the applicant at the top of the waiting list should be processed and “ready to lease” when a vacancy occurs. Such procedures minimize vacancy loss at an apartment community. In offering a unit, the owner must consider unit size, preferences, income-targeting requirements, as well as the results of screening. Owners are also required to conduct applicant interviews as part of the process in making this final determination of eligibility. We will begin by examining the requirements included in applicant interviews.

4350.3 REV-1
Paragraph 4-24
(pg. 4-47)

A. THE APPLICATION INTERVIEW

Paragraph 4-24B lists items, which “*must*” be covered at the application interview. Unlike the contents of the application form, these items are not discretionary, they are required. Because these items are lengthy and are already included in the Handbook, we will not go over them in a one-by-one fashion here. Instead, we will hit a few high points and points of interpretation.

1. Penalties for submission of false information must be communicated to the applicant at the application interview.
2. Applicants must be asked whether any household member receives any of the types of income listed in Exhibit 5-1 or has any assets.

3. All household members, age 18 and older, must sign forms HUD-9887 and 9887-A.
4. All household members must provide proof of their Social Security number except those that 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.
5. The family must be informed that HUD will compare the data supplied by the family with information that federal, state and local agencies have on the family's income and household composition.
6. Owners must provide a copy of HUD's Fact Sheet, found in Appendix 7, which indicates how a resident's rent, is computed.
7. Advise applicants (**all** applicants, not just those who have a disability which may be readily observed), that the owners do not discriminate on the basis of handicap or disability.
8. Owners/managers of housing for the elderly or disabled must inform all applicants about the rules on owning common household pets.
9. Explain the use of HUD's EIV System, including the Existing Tenant Search, to determine if applicants are receiving HUD rental assistance at another location.
10. Provide each household with copies of the EIV & You brochure and the Resident Rights and Responsibilities brochure.

We have covered HUD's income targeting requirements in Chapter 8, and so will mention here a few key points that owners must be cognizant of in order to comply with the requirements for Section 8 developments:

1. Occupancy records must be kept for auditing and management review purposes; thus maintaining a carefully documented procedure for an offer of a unit to an applicant is essential.

2. If the owner is unable to meet the 40% income targeting goal during the year, he or she may lease to other eligible families on the waiting list. This can only happen after a “*reasonable marketing period*,” defined by HUD as no less than 30 days. In such cases, the owner is obligated to continue marketing the property to attract extremely low-income applicants.
3. Should an owner choose to follow the waiting list in order to achieve the income targeting goal and discover the goal will not be met, the owner may change the policy and adopt one of the three income targeting methods discussed in Chapter 8. Applicants on the waiting list must be notified of the change in the selection method.

B. VERIFICATION OF PREFERENCES

4350.3 REV-1
Paragraph 4-26
(pg. 4-55)

Any preference claimed by an applicant household must be verified, either at the time of initial application or when a unit becomes available. Management should be consistent with either method it chooses to verify preferences.

ACCEPTABLE VERIFICATION METHODS

The Handbook provides guidance on the various ways to verify the assortment of preferences. Let’s take a look at some of the verification methods below:

1. Displacement – documentation of government displacement or as a result of a presidentially-declared disaster;
2. Military Status – current military ID card or correspondence using military letterhead;
3. Residency - copies of bills or leases that include name and address of applicant as well as a letter from an employer indicating applicant as employee or future employee;

4. Disability – documentation from physician, psychologist, social worker, or other licensed health care professional or receipt of Social Security Disability benefits. Such documentation must confirm only the presence of a disability, not the nature and extent of the disability.

C. IMPLEMENTING SCREENING REVIEWS

4350.3 REV-1
Paragraph 4-27
(pg. 4-57)

Previously discussed in Chapter Six of the CPO Course Manual, we shall look at a few selected topics dealing with screening reviews of applicants, beginning with screening for rental history.

SCREENING FOR RENTAL HISTORY

We find Figure 4-7 in the 4350.3 REV-1 provides a list of acceptable and unacceptable questions for owners to ask current and prior landlords.

Objective/Acceptable Questions

- Was the tenant ever late with a rent payment? If yes, when and how many times was the tenant late?
- Did other lease violations occur? If so, what were they? How frequently did each of the other lease violations occur?
- Was the tenant ever cited for disturbing behavior? How often?
- Did the tenant violate house rules? What rules were violated and how many times did violations occur?
- Was the tenant evicted?

Inappropriate Questions

- Does the tenant's boyfriend/girlfriend visit often?
- Did the tenant make lots of complaints to the owner?
- What is the tenant's reputation?

Questions for current and former landlords must address issues of applicant behavior that is measurable and objective.

SCREENING FOR DRUG ABUSE AND OTHER CRIMINAL ACTIVITY

4350.3 REV-1
Paragraph 4-27E
(pg. 4-59)

Owners have available a choice in screening for drug-related and other criminal activity, including State lifetime sex offender registration. One option is to use the local Public Housing Authority (PHA) as the resource for collecting information on criminal activity. A second option is to utilize private credit or other screening services to conduct screening for drug-related and other criminal activity.

If an owner selects the local PHA to perform such screening, s/he is required to adhere to the strict guidelines defining the roles, relationships, and responsibilities of the PHA and the owner. It is much more commonplace to find agents and owners using private companies as a resource for collecting information on criminal activity to assist in the screening review process.

DENIAL OF ASSISTANCE BASED ON CRIMINAL SCREENING RESULTS

The owner may deny admission to an applicant using his/her standard for admission screening if the criminal background check indicates the applicant provided false information. If the determination is made by either the PHA or owner to deny admission to the applicant, the entity making the determination must:

1. Notify the applicant of the proposed denial of admission.
2. Provide the subject of the record and the applicant with a copy of the information the action is based upon.
3. Provide the applicant with an opportunity to dispute the accuracy and relevance of the information obtained from any law enforcement agency.

Owners must also deny admission if the State sex offender registration record indicates the applicant provided false information.

D. DENIAL OF ASSISTANCE TO NONCITIZENS

HUD requires that only U.S. citizens and eligible non-citizens receive federal housing assistance in all properties covered by the 4350.3 REV-1. Citizenship eligibility is not

reviewed for the following properties: Section 221(d)(3) BMIR properties, Section 202 PAC, Section 202 PRAC, Section 811 PRAC, and Section 202 projects with units not receiving assistance under the Rent Supplement or Section 8 programs. Paragraph 4-31 completes the discussion of the citizenship rule.

It is important to note that the owner cannot deny assistance to an applicant who has submitted all documentation on time, but a delay is attributed to DHS verification or the owner is awaiting the completion of the appeals process. In such cases the family is not penalized for a delay caused by DHS or other sources.

A family at the top of the waiting list with at least one family member who has submitted the necessary documentation of eligible immigration status and has been determined to be eligible must be offered a unit. All household members who submitted their documentation on time will be assisted until DHS verification is returned. If a household member did not provide the required documentation, then the household assistance will be prorated.

Later, if DHS verification indicates that a household member is eligible, the household will continue to receive assistance. If DHS determines that a household member is not eligible (as in the case of someone visiting the U.S. on a student visa), the household's assistance will be prorated.

Let's explore the reasons for denial of assistance.

1. An applicant fails to provide documentation of citizenship and eligible immigration status by the owner's written deadline; or,
2. The applicant submits such documentation on time, but DHS primary and secondary documentation fails to verify the eligible immigration status being claimed; AND,
 - a. No appeal is requested by the family; or,
 - b. The results of the appeal rule against the family.

The owner must provide the applicant family with a written notice that includes the following elements:

1. Assistance will be denied or terminated and the reasons for such action;
2. The family may be eligible for proration of assistance;
3. The family may appeal to DHS the results of the secondary verification;
4. The family may request an informal hearing with management after the DHS appeal or in lieu of the DHS appeal;
5. The family will receive assistance during the time of the DHS appeal; however, upon conclusion of the appeal, if the family receives a negative decision, assistance may be delayed while the owner provides the family an opportunity for an informal meeting.

The timeframes for an appeal to the DHS or to management is within 30 days of notification.

The owner must keep all of the documents related to the applicant's eligible immigration status on file for a minimum of five years.

SELECTING TENANTS FROM THE WAITING LIST MINI QUIZ

- TRUE 1. An applicant who fails to submit evidence of citizenship by the date specified by
FALSE the owner must be denied assistance.
- TRUE 2. Owners may require that copies of an income tax return be provided by the
FALSE applicant at the application interview.
3. The HUD Fact Sheet is found in Appendix _____.
- TRUE 4. Owners must use only local Public Housing Authorities to conduct screening for
FALSE drug-related and other criminal activity.

CHAPTER 12

CALCULATION OF TOTAL TENANT PAYMENT AND TENANT RENT

Rent computation is presented in the 4350.3 REV-1, Chapter 5, Section 4, Paragraphs 5-24 through 5-31. Additional information is presented in Exhibit 5-8, Tenant Rent Formulas; Appendix 7A, The 50059 Data Requirements; Appendix 7-B Form HUD-50059, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures; Appendix 8, The 50059 Data Entry Rules.

I. INTRODUCTION

It was not so long ago (the mid-1980's) that rent computation could be a painfully complicated process, sometimes employing three and four-page worksheets to compute a single tenant's rent. Thankfully, that era is behind us now, and rent computation has become, for all but a tiny percentage of tenants, a fairly straightforward proposition which involves running a tenant family's annual and adjusted incomes through the rent formula appropriate to the housing program in which they reside. Computing annual and adjusted income is really far more difficult than computing rent at this point.

For that reason, and because so few people are still having their rents computed on any of the long worksheets, we have chosen to assume in this training program that all assisted housing tenants in the programs covered by the 4350.3 REV-1 (except BMIR) are having their rents computed right on the HUD Form 50059, without having to resort to use of one of the long rent computation worksheets. For the purpose of this program and CPO examination, we have included a rent computation worksheet, which focuses on the primary elements of calculating accurate rent: assets, income, and allowances.

Being able to compute rent correctly is probably the most serious benchmark for measuring the occupancy expertise of someone working in HUD-assisted housing, because it is not simply a matter of running numbers through a formula--you have to know and understand policy on net family assets and asset income, annual income, and allowances and adjusted income before you even get to the rent formula.

Without being too pessimistic about it, there are plenty of opportunities to make mistakes in the course of computing annual and adjusted income and rent. You have to maintain constant focus to avoid making mistakes--and avoiding mistakes is essential. Why? Because if a tenant is overcharged for rent due to management's error, management must reimburse the tenant the amount he/she overpaid. On the flip side of the coin, if a tenant is undercharged due to management's miscalculation of the rent, HUD must be paid the difference between the amount the tenant paid and the amount the tenant should have paid. The resident cannot be charged for these errors and a 30-day notice must be provided before the resident's portion of the rent is increased. Mistakes in rent computation cost money, and housing owners generally are not too happy about that.

Having said this, we should emphasize on the positive side that there is no reason why a person who takes the time to study HUD policies on assets, income, allowances, and rent computation, and who is diligent about doing a good job of it, should not be able to compute rents correctly every time. We encourage you to develop the good habits of concentration and attention to detail that will help you to compute rents correctly every time.

4350.3 REV-1
Paragraph 5-25
(pg. 5-65)

A. RENT COMPUTATION TERMINOLOGY

Most of the information is self-explanatory. One sort of confusing thing is that what is called Contract Rent for the Section 8 Program is called Basic Rent in the 236 Program. The Contract Rent for 202 and 811 PRACS is defined as the operating rent minus the utility allowance. Note too in Paragraph 5-26C, that the phrase "*utility reimbursement*" refers to payments made to tenants who are sometimes called "*negative renters*."

4350.3 REV-1
Paragraph 5-25
(pg. 5-65)
Exhibit 5-8

B. RENT COMPUTATION FORMULAS

The formulas used in computing rents for the different assisted housing programs begin in Paragraph 5-25C and continue through Paragraph 5-31. Let's first take a look at Figure 5-6, which provides the formulas for Total Tenant Payment calculation for Section 8, PAC, PRAC, RAP and Rent Supplement.

4350.3 REV-1
Paragraph 5-26
(pg. 5-67)

<p align="center">Section 8, PAC, PRAC, and RAP</p> <p>TTP is the greater of the following:</p>	
	<ul style="list-style-type: none"> • 30% of monthly adjusted income; • 10% of monthly gross income; • Welfare rent (welfare recipients in as-paid localities only); or • The \$25 minimum rent (Section 8 only). • Section 8, RAP, and PAC programs may admit an applicant only if the TTP is less than the gross rent. • In PRAC properties, the TTP may exceed the PRAC contract rent.
<p align="center">Rent Supplement</p> <p>TTP is the greater of the following:</p>	
	<ul style="list-style-type: none"> • 30% of monthly adjusted income; or • 30% of gross rent. • At move-in or initial certification, the amount of Rent Supplement assistance may be no less than 10% of the gross rent or the tenant is not eligible.

TENANT RENT FORMULAS

Paragraph 5-26 walks through the calculation of both tenant rent and assistance payments for the Section 8, PAC, PRAC, RAP and Rent Supplement programs. A Tenant Rent is computed in cases where the resident is given a utility allowance to offset, if you will, what would be a higher rent, as a result of the resident having to pay for the utilities. For example,

Example- Calculating Tenant Rent

TTP:	\$225
Utility allowance: -	\$ 75
Tenant rent:	\$150

ASSISTANCE PAYMENTS

The Housing Assistance Payment (HAP) represents the difference between the Gross Rent and TTP, for which the owner bills HUD on a monthly basis. As the Handbook illustrates with an example for the Section 8 Program:

Example - Calculating HAP

Gross rent	\$564
TTP	- \$175
HAP	\$389

4350.3 REV-1
Paragraph 5-26D
(pg. 5-68)

C. MINIMUM “RENT”

In the Section 8 program, residents must pay a minimum TTP of \$25. HUD introduced a few years ago minimum rent financial hardship exemptions, which families may qualify for in the following long term situations:

1. The family has lost federal, state or local government assistance and awaiting an eligibility determination;
2. The family would be evicted if the minimum TTP requirement was imposed;
3. The family’s income has decreased;
4. There has been a death in the family; or,
5. Other situations deemed appropriate by HUD.

Once a hardship has been claimed, the owner must determine if it is temporary or long term. If the hardship is determined to be temporary, the minimum TTP is imposed after the completion of a 90-day minimum rent suspension period. The rent is implemented retroactively back to the initial date of the suspension.

If the hardship is determined to be long term, the minimum rent is exempted until such time that the hardship is relieved. The owner is obligated to recertify the family every 90 days to verify the hardship still exists.

4350.3 REV-1
Paragraph 5-29
(pg. 5-78)

D. CALCULATING TENANT CONTRIBUTION FOR 236 AND BMIR

In a 236 property, residents must pay at least the Basic Rent but will not pay more than the 236 market rent.

221(d)(3) BMIR sites have perhaps the easiest rent computation formula: at move in, the resident simply pays the BMIR rent that is established by HUD. After move in, the resident pays either the BMIR rent or 110% of the BMIR rent, depending on the family's annual income.

The 236 and BMIR rent formulas appear below.

Section 236 Without Utility Allowance	236 With Utility Allowance
Tenant Rent is the greater of: <ul style="list-style-type: none"> • 30% of monthly adjusted income or • Section 236 Basic Rent 	Tenant Rent is the greater of: <ul style="list-style-type: none"> • 30% of monthly adjusted income less the utility allowance or • 25% of monthly adjusted income or • Basic Rent
*Tenant Rent may not be more than the 236 market rent	

Section 221(d)(3) BMIR

- At initial certification, the tenant pays the BMIR rent.
- At recertification, the tenant's annual income is compared to the BMIR income limits. If the tenant's annual income is:
 - Less than or equal to 110% of the BMIR income limit, the tenant pays the BMIR rent;
 - Greater than 110% of the BMIR income limit, the tenant pays 110% of the BMIR rent.

CALCULATION OF TOTAL TENANT PAYMENT AND TENANT RENT MINI QUIZ

1. The Russo family lives in a Section 8 complex. Their annual income is \$14,500 and their adjusted income is \$13,050. They are not welfare recipients. Compute the Russo's Total Tenant Payment.

ANSWER:

2. Francis Goldman is an elderly Rent Sup tenant. Her adjusted income is \$8,100. The Gross rent on her unit is \$410. The HCDA percentage being used to calculate her rent is 30%. Compute Ms. Goldman's Total Tenant Payment.

ANSWER:

3. The Wilkerson's live in a Section 236 complex, which has project-paid utilities. Their adjusted income is \$19,730. The Basic Rent on their unit is \$415 and the Market Rent is \$520. The HCDA percentage being used to calculate their rent is 30%. Compute the Wilkerson's Tenant Rent.

ANSWER:

4. The Allen family lives in a Section 236 complex with tenant-paid utilities. Their adjusted income is \$12,100. The Basic rent on their unit is \$330, the Market Rent is \$415, and the Utility Allowance is \$50. The HCDA percentage being used to compute their rent is 30%. Compute their Tenant rent.

ANSWER:

CHAPTER 13

OVERVIEW OF ENTERPRISE INCOME VERIFICATION

HUD's mandated use of the Enterprise Income Verification System in its entirety is presented in Chapter 9 of the 4350.3, which is solely dedicated to this topic. In addition, information regarding EIV is also in other sections of the 4350.3 REV-1, including: Chapter 1, Paragraph 1-7; Chapter 3, Section 1, Paragraph 3-3, Paragraph 3-10, and Paragraph 3-30; Chapter 4, Paragraph 4-2 and Figure 4-1, Section 1, Paragraph 4-3, Paragraph 4-4 and Paragraph 4-7, Section 3, paragraph 4-22, and Section 4, Paragraph 4-24; Chapter 5, Section 1, Paragraph 5-3 and Paragraph 5-5, Section 3, Paragraph 5-13, Paragraph 5-15. Paragraph 5-18, Paragraph 5-20, and Paragraph 5-23; Chapter 6, Introduction, Paragraph 6-1, Section 4, Paragraph 6-27, Paragraph 6-30 and Figure 6-9, and Exhibit 6-6; Chapter 7, Introduction, Paragraph 7-2, including Figure 7-1, Section 1, Paragraph 7-3, Paragraph 7-4 Paragraph 7-7 and Figure 7-3, and Paragraph 7-8, Section 2, Paragraph, 7-10 and Paragraph 7-12; Chapter 8, Introduction, Paragraph 8-2 and Figure 8-1, Section 4, Paragraph 8-17, Paragraph 8-18, Paragraph 8-20, and Paragraph 8-24. In addition, the Glossary added key terms related to EIV and Appendix 3 and 6C were updated to include EIV.

I. INTRODUCTION

Chapter 9 of the 4350.3 REV-1 covers the mandatory use of HUD's Enterprise Income Verification (EIV) system in its entirety. It is essential to recognize that Owners' and Agents' obligation to comply with EIV cannot be separated from the rest of the work involved with management of HUD-assisted housing, but is instead inextricably entwined into the work you do. This is reflected in the fact that the 4350.3 REV-1 discusses EIV in almost every chapter of the Handbook. In such instances, we will not duplicate the discussion in this chapter, but rather cover the topic in corresponding chapters of this training manual. Instead, we will focus on the contents of Chapter 9, which are divided into 6 sections. The last section provides a listing of resources, and isn't discussed or reiterated in this training. In addition, the 7 Exhibits in this Chapter are extremely helpful in understanding the Enterprise Income Verification System and we will review them at the end of this chapter.

4350.3 REV-1
REV-1
Paragraph 9-3 -
9-5 (Pg. 9-2)

1. SECTION 1: ENTERPRISE INCOME VERIFICATION (EIV) SYSTEM

This section provides an introduction to the mandatory use of the Enterprise Income

Verification (EIV) system.

A. WHAT THE EIV SYSEM IS AND ITS MANDATORY USE FOR OWNERS

The EIV system is a computer matching data-base which provides Owners and Agents with employment, wage, unemployment compensation and Social Security benefit information obtained from the Social Security Administration (SSA) and the U.S. Department of Health and Human Services' (HHS) National Directory of New Hires (NDNH). The information in the EIV system must be used in its entirety by owners (and agents) to verify employment and income information at the time of recertification (annual and interim) and to reduce errors in subsidy payments. It compares the information submitted on the most recent 50059 for tenants participating in HUD's assisted housing programs who have valid personal identifying information (name, date of birth and social security number reported on the form HUD-50059, which was submitted to TRACS with the data contained in the EIV system.

4350.3 REV-1
REV-1
Paragraph 9-6
(Pg. 9-3 - 9-6)

2. SECTION 2: EIV SOURCE DATA

This section of Chapter 9 discusses: the sources of the data in EIV, the schedule of data updates and screening of personal identifiers which are necessary to obtain data from the EIV System.

A. EIV DATA

4350.3 REV-1
REV-1
Paragraph 9-6
A.
(Pg. 9-3)
Exhibit 9-6

The tenant information in EIV is data from the current, active HUD-50059 in TRACS, for each household; this information is transmitted to TRACS by owners and managing agents.

EIV obtains employment and income data from two sources: the Social Security Administration (SSA) and the National Directory of New Hires (NDNH). From the Social Security Administration, EIV acquires information on social security, supplemental security income, and dual entitlement benefits, as well as Medicare premium information and disability status. EIV acquires new hires, or W-4 information, and quarterly wages for federal and non-federal employees as well as quarterly unemployment compensation benefits from the NDNH. The NDNH receives its information from State Workforce Agencies.

For specific information on the information HUD requests from the NDNH, please see Exhibit 9-6 National Directory of new Hires (NDNH) Data Elements. Please note that some of the data normally displayed in EIV may not be available because

some of the data elements are optional for employers to report.

4350.3 REV-1
REV-1
Paragraph 9-6
B.and C.
(Pg. 9-3-9-6)

B. SCHEDULE OF EIV REPORTS AND SCREENING OF PERSONAL IDENTIFIERS

The handbook provides that a quarterly match is conducted against SSA records and a monthly and quarterly match against the NDNH for tenants who pass the SSA identity test, which is also called pre-screening. The monthly match for the NDNH matches the entire tenant base with the new hires (W-4) data, and newly admitted tenants with the wage and unemployment benefit data; whereas the quarterly report matches the entire tenant base with the new hires (W-4), wage and unemployment benefit data.

Before a tenant can be matched with data from the SSA and the NDNH the information regarding their personal identifiers, which are last name, Date of Birth (DOB) and Social Security Number (SSN) have to be determined accurate. A pre-screening is conducted to identify tenants who are missing or have invalid personal identifiers. A tenant's personal identifier(s) must be corrected in TRACS before a match can be conducted with the EIV system. Once the personal identifiers are corrected in TRACS, they are sent to the SSA for verification of their personal identifiers against SSA records. Tenants whose personal identifiers do not match SSA's records cannot be matched against HHS' NDNH or SSA's records until the personal identifier information has been corrected in TRACS. Please see **Exhibit 9-1: Failed EIV Pre-Screening Report Error Message**.

4350.3 REV-1
REV-1
Paragraph 9-7 -
9-16
(Pg. 9-6-9-30)

3. SECTION 3: EIV REPORTS

This section of Chapter 9 discusses both the use of EIV reports contained in EIV, as well as when independent third party verification is required, documentation required to demonstrate compliance with requirements regarding reimbursement of over and underpayment of subsidy, retention of EIV reports, the method for requesting information from the SSA, what needs to occur if the data in EIV is incorrect or doesn't belong to the Tenant. Reimbursement of unreported or underreported income and over-reported income is discussed in Chapter 8 of the 4350.3 and Chapter 24 of this training.

4350.3 REV
Paragraph 9-8
(pg. 9-6)

A. USING EIV DATA

Owners (and Agents) must use EIV in its entirety, but may not suspend, terminate, reduce, make a final denial of rental assistance, or take any other adverse action against an individual based solely on the data in EIV. This is discussed in Chapter 24 of this course. Also note that Owners (and Agents) must have current, signed consent form HUD-9887 on file before accessing the employment and income information in EIV for a tenant. Please see Chapter 17 of this course manual for a discussion on the requirements on consent forms.

Let's now review what HUD considers using EIV in its entirety, other requirements regarding the use of EIV reports.

4350.3 REV
Paragraph 9-8A.
(pg. 9-6-9-7 and
Paragraph 9-11
B.5., pg. 9-15)

1) EIV IN ITS ENTIRETY

Owners (and Agents) must use:

- a) The EIV Income Report within 90 days after transmission of the move-in/initial certification to TRACS to confirm/validate the income reported by the household.
- b) The EIV Income Report during annual and interim recertifications as a third party source to verify a tenant's employment and income and provide documentation in the tenant file as provided in the handbook;
- c) Other EIV Income Reports (Income Discrepancy Report, New Hire Report, No Income Reported on 50059, and No Income Reported by HHS or SSA); and
- d) EIV Verification Reports (Existing Tenant Search, Multiple Subsidy Report, Identity Verification Reports, and Deceased Tenants Report).

4350.3 REV
Paragraph 9-8B.
(pg. 9-7)

2) OTHER REQUIREMENTS

Owners (and Agents) must also:

- a) Use the Existing Tenant Search for new tenants and include

this in their Tenant Selection Plan and develop policies and procedures regarding the other verification reports and use of the EIV income reports.

4350.3 REV
Paragraph 9-
11 and 9-12
(pg. 9-8-9-27)
Exhibits, 9-1, 9-
2, 9-3, 9-5. 9-6
and 9-7.

3) EIV REPORTS

The reports contained in EIV are explained in detail in the 4350.3, including what are the reports, how to access the reports, when reports must be run, and retention requirements (where and for how long). The EIV Income Reports (Summary Report, Income Report, Income Discrepancy Report, No Income Reported on 50059, No Income Reported by HHS or SSA, and the New Hires Report) are discussed in detail in Paragraph 9-11: **EIV Income Reports** and the EIV Verification Reports (Existing Tenant Search, Multiple Subsidy Report, Identity Verification Report, [including both the Failed EIV Pre-Screening Report and the Failed Verification Report also called Failed the SSA Identity Test], the Deceased Tenant Search, and the New Hires Report, are discussed in detail in Paragraph 9-12: **EIV Verification Reports**.

A number of the Exhibits are helpful in understanding the EIV Reports:

- 1) Exhibit 9-1 for the EIV Failed Pre-screening Report Error Messages, which explains the error messages and the corrective action necessary;
- 2) Exhibit 9-2 Failed Verification Report (Failed the SSA Identity Test) Error Messages, which provides an explanation and corrective action necessary;
- 3) Exhibit 9-3, EIV Income Report Information, for the types of information contained in each of the components of the Income Report;
- 4) Exhibit 9-5 Use of EIV Reports, which provides an excellent summary of each report, what paragraph in Chapter 9 it is discussed in, whether the owner needs to address the report in the Tenant Selection Plan or its Policies and Procedures, the use of the report (if and when it is required), file documentation and retention (tenant file vs. master file and for how long);

- 5) Exhibit 9-6: National Directory of New Hires (NDNH) Data Elements, which explains the data elements requested by HUD from the NDNH; and
- 6) Exhibit 9-7, How EIV Calculates Income Discrepancies, which explains the Period of Income (POI) for the discrepancy analysis.

Let's now turn to Exhibit 9-5, Use of EIV Reports. It is crucial that you take the time to review this Exhibit and pay close attention to the language contained in the Exhibit pertaining to your obligation to run and retain a report.

4350.3 REV
Paragraph 9-15.
(pg. 9-28-29)

B. WHEN OWNER NEEDS INFORMATION FROM SSA

If an Owner (or Agent) needs information to verify Social Security benefits the owner must ask the tenant to obtain the information using the SSA's website. The owner may assist the tenant.

4350.3 REV
Paragraph 9-16.
(pg. 9-29-9-30)

C. EIV INCOME IS INCORRECT OR DOESN'T BELONG TO THE TENANT

If the information in EIV is incorrect HUD cannot correct the information. Rather, the originator of the information must do so:

- 1) TRACS: the owner;
- 2) Employment and wage information: the employer;
- 3) Unemployment benefit information: local State Workforce Agency (SWA);
- 4) Social Security and Supplemental Security Income Information: the SSA; and
- 5) Identity theft: the tenant should follow specific procedures outlined in the handbook to report it.

4350.3 REV
Paragraph 9-17-
9-18.
(pg. 9-31-9-33)

4. SECTION 4: SECURITY OF EIV DATA

This section of Chapter 9 discusses the disclosure of EIV data, EIV Rules of Behavior, Penalties for Failure to Have Access To and/or Failure to Use EIV, Security Training, Safeguarding EIV Data, but also when independent third party verification is required, documentation required to demonstrate compliance reimbursement of over and underpayment of subsidy, retention of EIV reports, the method for requesting information from the SSA what needs to occur if the data in EIV is incorrect or doesn't belong to the Tenant.

A. DISCLOSURE OF EIV DATA

The Handbook contains very strict rules regarding the disclosure of EIV data, which is covered by the Federal Privacy Act.

1. Owners (and Agents) may not share a household member's EIV data with another member of the household **or anyone assisting a member of the household with the recertification without written consent.** This includes showing the information and providing a copy of the data. See Exhibit 9-4 for a sample tenant consent for the release of this information.
 - a. An Owner (and Agent) may however show the Head of Household how rent was calculated.
 - b. Please note that although a resident may sign a release for a resident service coordinator (RSC) to view the EIV data for the purpose of assisting the resident during the recertification process, the RSC must be present during the interview. An RSC isn't otherwise permitted access to a tenant's EIV data; even if the Tenant has signed a general release authorizing the Service Coordinator to have access to their file.
2. If someone signs a release of information permitting another individual to see their EIV data to assist them in the recertification process, the EIV data must pertain only to the tenant who has provided the consent; such individuals don't have access to any other household's EIV data.
3. EIV data may be disclosed for limited official purposes. One of the official purposes is when an Independent Public Auditor (IPA) is hired by an Owner to perform a financial audit. The Handbook contains very specific rules regarding their access to and use of the data.
 - a. Official purpose doesn't include the use of the data by monitoring entities for programs not authorized to use the EIV data, such as the Low Income Housing Tax Credit Program or Rural Housing Services.
4. There are significant penalties for unauthorized disclosure or inspection of EIV data.

B. RULES OF BEHAVIOR

The Rules of Behavior and the differences for EIV Users and EIV Non-Users

1. **EIV users** who have access to the EIV system must adhere to the EIV Rules Of Behavior (ROB) signed at the time of requesting access to the EIV system. A copy of the signed ROB **must** be kept on file by the TRACS/EIV Security Officer and a signed copy **should** also be retained by the EIV user.
2. The signed initial and current online (unsigned) access authorization forms containing the ROB must be kept on file along with the owner approval letters **for EIV non-users** and that upon request, the forms must be made available to the entity monitoring EIV system compliance.
3. Owner/Agent who do not have access to the EIV system but who view or use EIV data/reports provided by authorized EIV Coordinators or EIV Users in order to perform their job functions, must adhere to the EIV ROB and the ROB must be signed and kept on file. Upon request, the signed ROB must be made available to the entity monitoring EIV system compliance.
4. IPAs hired by the owner to perform a financial audit must adhere to the ROB and the ROB must be signed by the IPA and kept on file. Upon request, the signed ROB must be made available to the entity monitoring EIV system compliance.

5. SECTION 5: PENALTIES FOR FAILING TO HAVE ACCESS TO OR FAILURE TO USE EIV

This section of Chapter 9 discusses not only the penalties for failing to have access to EIV, but also security training and safeguarding EIV Data.

A. Penalties

As stated earlier, Owners (and Agents) must have access to and use EIV in its entirety. Failure to so may be identified during a Management and Occupancy Review (MOR) or at other times, and will result in severe penalties. Please note that when there is a change in ownership or management at a property, the new owner or management agent must

obtain access to and begin using the EIV system within 90 days from the date the owner takes possession of the property or the effective date of the management agreement with the owner. Failure to do so may result in penalties.

The penalties are as follow:

1. If the violation was identified during an MOR it will result in and MOR finding.
2. Regardless of when the violation is found, it will incur a penalty of a five percent decrease in the voucher payment for the month following the date the violation was found and each subsequent voucher payment until the violation is cured.
3.
 - a. The owner will have 30 days to cure the violation. If the violation is not cured during the 30 day period, both the owner and the management agent, if applicable, will be flagged in HUD's Active Partners Performance System (APPS). Once the violation is cured, the flag will be removed.

4350.3 REV-1
Paragraph 9-20
(pg. 9-35-9-36)

B. Security Training

EIV users, and non-users who use EIV reports to perform their jobs, are required to complete security training annually. Please see the Handbook for details.

4350.3 REV-1
Paragraph 9-21
(pg. 9-36-9-38)

C. Safeguarding EIV Data

The Handbook provides very specific safeguards that must be followed regarding EIV data. These include: 1) technical safeguards regarding accessing the EIV system and the certification process; 2) administrative safeguards, including the required establishment of policies and procedures governing the use of the EIV system; and 3) physical safeguards, including storing and transmitting electronic EIV data, and hardcopy EIV data, computer security and the destruction of EIV data.

Please review these safeguards.

CHAPTER 13
ENTERPRISE INCOME VERIFICATION
MINI QUIZ

- | | | |
|-------|----|--|
| TRUE | 1. | The only place information relating to the Enterprise Income Verification System is located in the 4350.3 Rev-1, Chapter 9. |
| FALSE | | |
| | | |
| TRUE | 2. | Owner must use EIV Verification Reports. |
| FALSE | | |
| | | |
| TRUE | 3. | A resident service coordinator may view a resident's EIV information at all times provided the resident has signed a release form. |
| FALSE | | |

CHAPTER 14

ASSETS AND ASSET INCOME

Assets and asset income are discussed in the 4350.3 REV-1, Chapter 5, Paragraph 5--7. Additional information can be found in Exhibit 5-2, ASSETS. Please note that this Exhibit has not been updated to conform with Change 4 language. Verification requirements for assets are presented in Appendix 3, ACCEPTABLE FORMS OF VERIFICATION.

I. INTRODUCTION

Applicants/tenants can have unlimited assets. However, income from the assets is included in family income for rent calculation purposes and for determining eligibility. Assisted housing owners may sometimes take a fairly lax attitude toward identifying and verifying assets. The attitude is understandable. Since people qualifying for assisted housing are by definition, low-income people, there may be a tendency to assume that applicants and residents have no assets. Quite often it may turn out that families have few or no assets. On occasion though, families applying to, or residing in, assisted housing may turn out to have a surprising number of assets, enough to affect both their income and their eligibility. For this reason, and because it is required by the housing programs, it makes sense to learn HUD's definitions of assets and asset income, and to make a good faith effort to identify any assets applicant/participant families may have. Exhibit 5-2 covers what is and isn't considered family assets.

4350.3 REV-1
Paragraph 5-7
(pg. 5-23)

A. DETERMINING THE VALUE OF ASSETS

The 4350.3 REV-1, Paragraph 5-7C, stipulates that assisted housing owners use the "cash value" of assets when determining the value of a family's net assets. Cash value is equal to market value minus reasonable costs that would be incurred if the asset were converted to cash or sold as illustrated below.

Fair Market Value	\$ _____
- Reasonable Costs	\$ _____
- Debt Owed	\$ _____
= Cash Value	\$ _____

1. EXAMPLES OF SUCH "REASONABLE COSTS" LISTED IN THE 4350.3 REV-1:

Reasonable costs are *"penalties for premature withdrawal," "broker/legal fees and "settlement costs for real estate transactions."* Other such reasonable costs might be any unpaid encumbrances owed on the asset, the unpaid balance on a mortgage, etc.

2. COMMENTS ON CASH VALUES:

Use of cash value for assets is fairer than use of Fair Market value, but it is also more difficult to verify. To determine the cash value of a Certificate of Deposit, for instance, it becomes necessary to establish not only the value of the CD, but also what penalties would be assessed for early withdrawal. Likewise, in determining the value of a 2-acre plot of land out in the country, it becomes necessary to determine not only the Fair Market Value of the plot, but also the costs that would be associated in selling it.

The value of assets owned jointly should be prorated equally among the persons owning the assets, unless there is verified information indicating that ownership is not equally distributed. In such instances, proration should be performed in accordance with the verified distribution of ownership.

4350.3 REV-1
Paragraph 5-7E
and F (pg. 5-27)

B. DETERMINING INCOME FROM ASSETS

Income from assets is discussed in paragraph 5-7E and F. There are two possible ways of computing income from assets.

1. For families with Net Family Assets which have a **cash value less than or equal to \$5,000**, income from assets will be equal to **actual income** from assets. When calculating this income you use the face value of the asset, not the cash value of the asset.
2. For families owning Net Family Assets with a **cash value greater than \$5,000**, asset income will equal **the greater of actual asset income or imputed income from assets**, which is determined by

multiplying the family's total assets by a passbook savings rate determined by HUD, which is .02 (2%).

Remember in computing asset income, whether actual or imputed, to observe the rounding procedures set forth in Appendix 8, Data Entry Rules for the 50059 Data Requirements.

4350.3 REV-1
Paragraph 5-7G(8)
(pg. 5-38)

**C. ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE
WITHIN TWO YEARS PRIOR TO THE EFFECTIVE DATE OF A
CERTIFICATION/RECERTIFICATION**

The 4350.3 REV-1 states that any asset disposed of for less than its Fair Market Value (FMV) is counted, including cash gifts and property, where the fair market value of all assets given away during the past two years is greater than \$1000. This policy is illustrated by a couple of examples:

<p>Examples - Assets of More or Less than \$1,000 Disposed of for Less than Fair Market Value</p>
--

During the past two years, Sally Moore donated \$500 to the local food bank and \$150 to a camp program. The total amount she disposed of for less than fair market value is \$650. Since the total is less than \$1,000 the donations are not treated as assets disposed of for less than fair market value.

Bill Smith gave each of his 3 children \$500. Because the total exceeds \$1,000, the \$1,500 in gifts is treated as assets disposed of for less than fair market value.

The value of such assets disposed of for less than Fair Market Value shall be set at the asset's cash value minus the amount received for the asset.

Fair Market Value \$ _____
 - Reasonable Costs \$ _____
 - Debt Owed \$ _____
 = Cash Value
 (if not disposed of
 For less than Fair
 Market value) \$ _____
 - Money Received \$ _____
 = Asset Disposed of
 For less than Fair
 Market Value/
 Divested Cash Value \$ _____

The HUD Handbook cites the following example:

Asset Disposed of for Less Than Market Value

An applicant sold her home to her daughter for \$10,000. The home was valued at \$89,000 and had no loans secured against it. Broker fees and settlement costs are estimated at \$1,800.

<u>\$89,000</u>	Market value
<u>- 1,800</u>	Fees
\$87,200	Cash value
<u>- 10,000</u>	Sales price to daughter
\$77,200	Asset disposed of for less than fair market value

In this example the asset disposed of for less than fair market value is \$77,200. That amount is counted as the resident's asset for two years from the date the sale took place.

*(The \$10,000 received from the daughter may currently be in a savings account or other asset or may have been spent. The \$10,000 will **be counted as an asset if the applicant has not spent the money.**)*

1. POLICY APPLICABLE

- a. Assets put into non-revocable trusts or business assets sold for more than \$1,000 less than Fair Market Value are subject to the policy. Likewise, cash gifts in excess of \$1,000 are subject to this policy.

2. POLICY NOT APPLICABLE

- a. Families receiving only BMIR assistance are exempt from this policy.
- b. Assets disposed of, for less than Fair Market Value, pursuant to foreclosure, bankruptcy, divorce, or separation settlements are not subject to the policy.

3. APPLICANT CERTIFICATION REGARDING DISPOSING OF ASSETS REQUIRED

The 4350.3 REV-1 requires owners of the housing programs covered by the Handbook to obtain a self-certification from residents at each certification and recertification, on which the resident indicates whether or not he/she disposed of any assets for less than Fair Market Value in the past two years.

Note: Where such assets are identified and used in the Net Family asset and annual income determination, owners/managers must keep track of the date of the divestiture to make sure that the family does not remain "*on the hook*" for the asset for more than two years following the date of divestiture. When the two-year period expires, the income assigned to the disposed asset also expires. If the two-year period ends in the middle of a recertification year, then the tenant may request an interim recertification to remove the disposed asset(s).

D. PERCENTAGE USED TO CALCULATE IMPUTED INCOME

The 4350.3 REV-1 states, in Paragraph 5-7F(1)(b), that the Passbook Rate of .02 (2%) will be used to impute income from assets for families with Net Family Assets in excess of \$5,000.

E. ASSET EXCLUSIONS AND INCLUSIONS - SOME IMPORTANT POINTS

The following is not a complete listing of what is and isn't considered family assets. Look at Exhibit 5-2 to see what is and isn't considered a family asset. Mentioned here are points that attract our attention.

1. ITEMS WHICH ARE NOT CONSIDERED ASSETS

- a. "Assets that are not accessible to the applicant and provide no income to the applicant" such as a spouse who doesn't have access to a home because of domestic violence.
- b. *"Necessary personal property"* is not considered an asset. Examples given are *"clothing, furniture, cars, etc."* Do not become obsessed over whether a particular item of personal property owned by an applicant/participant is *"necessary."* Even collectibles like coins, stamps, and baseball cards are not considered assets unless *they are held as an investment*.
- c. *"Assets that are part of an active business"* are not included in Net Family Assets, for HUD's purposes. Thus the boat of someone who is working as fishing guide would not be considered an asset by HUD. Count income from a business as income.
- d. Circumstances are described in which a person may own an asset in name, but in fact the person does not control the asset, could not convert the asset to cash and derives no income from the asset. In such instances, HUD would not include that particular asset when calculating the family's net assets. For example, if a minor is the beneficiary of a trust established by someone who does not live in the unit and which he/she will receive at the age of 18, this trust would not be included in the asset calculation.
- e. Do not include *"Term life insurance policies,"* where there is no cash value.

- F . Change 4 instructs Owners and Agents to not include IRA, Keough and related retirement accounts as assets, when the Tenant is receiving periodic payments from the account.

2. ITEMS WHICH ARE CONSIDERED ASSETS:

In considering inclusions to Net Family Assets, the following points stand out:

- a. Cash is an asset, whether it is held in a savings or checking account, or hidden in a mattress.
- b. Trusts are included among Net Family Assets only if they are accessible to the family. The 4350.3 REV-1 provides detailed information concerning trusts – both revocable and non-revocable. We will consider two examples from the Handbook: 5-7G.

A Trust Accessible to Family Members (Revocable)

“Assez Charaf lives alone. He has placed \$20,000 in trust to his grandson to be available to the grandson upon the death of Mr. Charaf. The trust is revocable, that is, Mr. Charaf has control of the principal and interest in the account and can amend the trust or remove the funds at any time.

In calculating Mr. Charaf’s income, the owner will add the \$20,000 to Mr. Charaf’s net family assets and the actual income received on the trust to actual income from assets.”

Non-revocable Trust Distributing Income to the Creator/Tenant

“Reggie Bouchard has established a non-revocable trust in the amount of \$35,000 that no one in the tenant family controls. Income from the trust is paid to Mr. Bouchard. Last year, he received \$3,500.

The owner will count Mr. Bouchard’s actual anticipated income from the trust in next year’s annual income. Because the asset was disposed of for less than fair market value, the value of the asset given away, \$35,000, is counted as an asset disposed of for less than fair market value for two years.”

- c. For retired persons, retirement or pension distributions are considered assets if they were paid out as lump sum amounts. If they are paid periodically, they are considered income.
- d. Under "*Lump Sum Receipts*," remember that lump sum payments of accumulated, previously unpaid Social Security or Supplemental Security Income periodic payments are assets, and are **not income**, even if an interim reducing the rent was completed prior to receipt of the lump sum payment.
- e. "*Personal property held as an investment*" would be included among Net Family assets. Such items could include the value of collections if the applicant/resident has a history of seeking out collectible items, purchasing them and selling them as a means of generating income.
- f. "*Cash Value of Life Insurance Policies Available to the Individual before Death (e.g., the surrender value of a whole life policy or a universal life policy.)*" **Note** that term insurance policies are not included among net family assets unless they have a cash value available to the individual before death.
- g. "*A Mortgage or Deed of Trust Held by an Applicant.*" The Handbook provides excellent guidance in treatment of such assets. Basically, mortgage payments are divided in to two categories: 1- principal and 2- interest. The principal portion of the mortgage payment "pays down" the outstanding debt. The interest portion of the payment is considered interest income.

To determine how these amounts should be computed, you would have to get hold of an amortization table which showed what amount of each month's payment went toward interest and what amount went toward principal.

- h. "*Annuities.*" When an applicant or tenant has the option of

withdrawing the balance in an annuity, the annuity will be treated like any other asset. It will be necessary to determine the cash value of the annuity in addition to determining the actual income earned. In most instances, an annuity from which payments have not yet been made is earning income on the balance in the annuity.

The actual income is the balance in the annuity times the percentage (either fixed or variable) at which the annuity is expected to grow over the coming year. (This money will be reinvested into the annuity, but it is still considered actual income.)

Calculating the Cash Value of an Annuity

Rodrigo Ramirez, site manager at Fernwood Forrest, has interviewed Barbara Barstow, an applicant who reports holding an annuity from which she will not receive payments for another 15 years when she turns 65. The applicant could not provide any more detail on the annuity but did report the name, address and phone number of her insurance agent.

Rodrigo called the insurance agent and faxed a copy of the applicant's approval for release of information. As a result, Rodrigo learned that the annuity is a fixed annuity, with a current value of \$20,400 earning interest at an annual rate of 4.5%. The applicant could withdraw the current balance in the account but would pay a surrender penalty of \$3,000. If the annuity is withdrawn, then the applicant will owe \$1,200 in tax penalties.

In this example, the important information for calculating cash value is the current value, \$20,400, the surrender fee, \$3,000, and the tax penalties, \$1,200. If the applicant withdrew the cash from the annuity, after paying the surrender fee and tax penalty, then the amount of cash received would be \$16,200.

The cash value, \$16,200, is recorded as an asset.

Rodrigo will also calculate the actual anticipated income on this asset:
 $\$20,400 \times .045 = \918 .

NOTE: Remember, when calculating the actual income on the asset (the interest on an asset), you use the face value of the asset, not the cash value of the asset.

F. ASSET VERIFICATION REQUIREMENTS

These are set forth in APPENDIX 3, ACCEPTABLE FORMS OF VERIFICATION.

ASSETS AND ASSET INCOME MINI QUIZ

- TRUE
FALSE
1. If the total amount of all assets given away by a resident in the last two years is less than \$1000, the amount would not be included as a divestiture of assets.

Marcia Decker recently took her three small children and fled her \$300,000 home, to escape from an abusive husband. She is unemployed and she and the children are currently receiving Welfare. She has no contact with her husband and he does not know where she is.

- TRUE
FALSE
2. Marcia would not be required to include her share of the house among her net family assets if she were to apply for assisted housing.
3. You are performing Marie Parkins' 8/1/13 annual recertification. She has \$491.00 in her checking account, which earns no interest. She also has \$4,366 in her savings account, which currently earns 2.5% interest. HUD computes income from assets at a rate of .02 (2%). Compute Marie's Net Family Assets and Asset Income on the excerpted portion of the sample 50059 Data Requirements form provided.

**INSTRUCTIONS FOR COMPLETING THE FOLLOWING 59 DATA REQUIREMENTS
CAN BE FOUND IN YOUR 4350.3 REV-1**

Asset Type	C/I	Cash Value	Interest Income
		\$	\$
		\$	\$
		\$	\$
Total Cash Value		\$	\$ Total Interest
If total cash value exceeds \$5,000, multiply the total amount by 2% to determine imputed income.			
Passbook Rate	2%		
Imputed Income		\$	
TOTAL ASSET INCOME		\$	(Greater of Imputed or Interest Income)

CHAPTER 15

ANNUAL INCOME

Annual income is presented in the 4350.3 REV-1, Chapter 5, Section 1, Paragraphs 5-3 through 5-6. It is additionally discussed in Exhibit 5-1, ANNUAL INCOME. Please note that this Exhibit has not been updated to conform to Change 4, or to comply with recent HUD notices on exclusions of income. Verification requirements pertaining to annual income are presented in Appendix 3, ACCEPTABLE FORMS OF VERIFICATION.

I. INTRODUCTION

Annual income is the gross income an applicant/tenant family **anticipates** it will receive during the 12 months following the effective date of its certification or recertification. The ability to determine an applicant's or resident's annual income is an essential skill for anyone working in assisted housing occupancy. First of all, you need to know an applicant's annual income before you can determine his/her income eligibility for your housing program. Secondly, annual income is the starting point for computing a tenant's rent.

As with almost everything else involved in HUD-assisted housing occupancy, the definition of annual income, the exclusions from and inclusions to annual income, and the methods for treating different types of income are highly technical. In addition, the different types of income that are specifically included or excluded from annual income are subject to fairly frequent changes, so you must stay current with HUD policy at all times.

Fortunately there are some aspects of annual income that have remained and will remain consistent over time. So the best approach to learning about annual income is to learn the principles relating to the ways annual income is determined, and then make an ongoing effort to stay current on policies pertaining to specific types of income as they go through changes.

A. PROJECTING AND ANNUALIZING INCOME

The process by which various periodic sources of income are converted into an annual income is called annualizing the income. The procedures to be used for annualizing income are presented in Paragraph 5-5. If you are not already familiar with them, you should take the time to acquaint yourself with them. A surprising number of miscalculated rents result from incorrect annualizing of income.

Example of How Not to Do it: One of the more common errors is to take income which is paid every two weeks, and to annualize it as follows:

*"Okay, they're paid every two weeks. There are 4 weeks in a month, so that means two pays per month. Two pays per month times 12 months equals 24 times the payment amount to arrive at the annual amount." **WRONG!***

Instead the thought process should be:

*"Okay, they're paid every two weeks. There are 52 weeks in the year, so if we divide 52 by two we will come up with the number of pay periods. That comes out to 26, so if we multiply their paycheck by 26 we will arrive at the annual amount." **RIGHT!***

Change 4 revises the method of annualizing income to comply with EIV requirements. The 4350.3 also gives the following example of calculation of income.

Example: EIV shows that John is working at Jack's Restaurant and John agrees that he is working there. John has brought in his four most current, consecutive check stubs. The owner must use the EIV Income Report as third party verification that John is employed at Jack's Restaurant and use the gross pay shown on the check stubs provided by the tenant for determining John's annual income. John is paid weekly.

Check stubs – gross pay 1) \$120; 2) \$145; 3) \$125; 4) \$130 – total gross pay = \$520

$\$520 / 4 = \130 average gross pay per week

$\$130 \times 52 \text{ weeks} = \$6,760$ gross annual income

1. PROJECTING INCOME AT TIME OF CERTIFICATION/RECERTIFICATION

Generally, owners are required to use current income that is known and annualize that income for recertification purposes. Owners must continue to allow for an interim recertification later in the year should financial circumstances change.

If the resident provides information that income will change during the recertification year, such *anticipated* income for the year may be used to annualize income for the year.

2. CHANGE IN INCOME

If a family experiences a change that results in a loss of income, they can always request that an interim redetermination be performed to reduce their rent.

3. ROUNDING CALCULATION

Remember, too, in computing annual income, that you should wait until you have arrived at an annual amount for income before rounding. Rounding earlier in the calculation will result in an incorrectly computed annual income. In other words round only when the calculation is ready for TRACS data entry.

EXAMPLE:

Joe Weeks works full-time for \$5.48/hour. The 4350.3 REV-1 advises us to annualize a full-time hourly rate by multiplying it by 2,080 hours. If we round \$5.48 down to \$5.00 and multiply it by 2,080, we come up with an annual income from employment for Joe of \$10,400. If, however, we multiply the hourly wage of \$5.48 times 2080 without rounding it first, we arrive at an annual income from employment of \$11,398.40. You can see that a difference of almost **\$1,000** results when you round incorrectly, before arriving at the annual amount.

HUD's Monthly Activity Transmission (MAT) User's Guide will address the issue of rounding in the future. The correct current rounding procedure is to round down at \$.49 and up at \$.50. Make sure to observe these rounding procedures not only in your calculation of Annual Income, but also your figuring of assets and asset income, allowances, and adjusted income and rent.

4. ANNUALIZING SPORADIC OR SEASONAL INCOME

The Handbook addresses the tricky situation of annualizing income from the residents whose income is sporadic or seasonal. We find the following language in the 4350.3 REV-1 - 5-5C:

"In all instances, owners are expected to make a reasonable judgment as to the most reliable approach to estimating what the tenant will receive during the year. In many of these challenging situations, midyear or interim recertification's may be required to reflect changing circumstances."

B. WHOSE INCOME IS INCLUDED IN ANNUAL INCOME?

It is probably easiest to communicate the policy if we break up types of income, and see if they are included for various family members.

1. EARNED (EMPLOYMENT) INCOME

Employment income of head, co-head, spouse, and all other family members age 18 and older is included in Annual Income. In addition, the following points with regard to employment income must be remembered:

- a. Where a head, co-head, or spouse under the age of 18 has entered into a lease under state law, any employment income earned by such persons will be included in the family's Annual Income, despite the fact that they are under the age of 18. Such persons are sometimes referred to as "*emancipated minors*." Where an emancipated minor under the age of 18 who is neither head, nor co-head, nor spouse, is a family member, such emancipated minor would be ruled a dependent, and any employment income they were earning would not be included in Annual Income.

NOTE: With Change 3, the earned and unearned income of Foster adults is now counted as income AND the unearned income of Foster children is now counted as income.

- b. Only the first \$480 of employment income earned by adult full-time students other than head, co-head, or spouse would be included in Annual Income. If the earned income is less than \$480 annually, count all of the income. (Including the first \$480 has the effect of making a wash with the dependent deduction for which the full-time student qualifies.)

2. UNEARNED (NON-EMPLOYMENT) INCOME

Unearned income of all family members is included in Annual Income, subject to the various regulatory limitations set forth in Exhibit 5-1, Income Inclusions and Exclusions.

C. TREATMENT OF LUMP SUM INCOME

As we mentioned earlier, in the chapter on Net Family Assets, most types of lump sum amounts received by assisted families should be treated as assets, not as income. In general, the types of lump sum amounts that would be included in annual income would be lump sums that were accumulations of previously unpaid periodic benefit amounts such as unemployment.

Note, however, that lump sum receipts for delayed payment of Supplemental Security Income and Social Security are not included in Annual Income, but are considered assets.

Lump sum payments caused by *delays in processing* periodic payments for unemployment or welfare assistance are included as income. How lump sum payments for delayed start of benefits are counted depends upon the following:

1. When the family reports the change;
2. When an interim re-examination is conducted; and
3. Whether the family's income increases or decreases as a result.

A lump sum payment resulting from delayed benefit income may be treated in either of the two ways illustrated in the example shown in Figure 5-3.

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.

D. INCOME FROM AN APPLICANT/TENANT-OPERATED BUSINESS

The way income from an applicant/tenant-operated business should be treated is described in paragraph 5-6H. The first key when dealing with self-employed persons is that you include their **net** income from self-employment in annual income, **not** their gross income from self-employment.

1. IN DETERMINING NET INCOME FROM SELF-EMPLOYMENT, THE FOLLOWING AMOUNTS MAY NOT BE DEDUCTED, IN ACCORDANCE WITH THE 4350.3 REV-1:

- a. Principal payments on loans, expenses for business expansion, or expenditures for capital improvements.

2. THE FOLLOWING ITEMS MAY BE DEDUCTED WHEN DETERMINING NET INCOME FROM SELF-EMPLOYMENT.

- a. Business expenses;
- b. Interest payments on loans, except where those expenses or loans are for business expansion or capital improvements; and
- c. Depreciation computed on a straight-line (**not** accelerated) basis may likewise be deducted.

3. VERIFICATION OF INCOME

Obviously, in determining net income from self-employment, you are going to be working from the applicant/tenant's documents and records. There really will be no third-party source you can write to for verification in such an instance. That is fine -- you have to verify the information, and if the only source of information is the financial records of the tenant, then that is where you will have to go to get the information. Appendix 3 contains a verification chart that summarizes acceptable forms of verification.

E. INCOME FROM ALIMONY AND CHILD SUPPORT

As stated in Paragraph 5-6F, any such amounts stipulated for a tenant household in a divorce or separation settlement or otherwise court ordered would have to be included in the family's annual income unless the family supplied a certification stating that such amounts were not being paid, and he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment.

F. INCOME OF TEMPORARILY ABSENT FAMILY MEMBERS

The question here is whether the absent family member still qualifies as a household member and resident of the unit.

1. If the temporarily absent family member will be returning to the unit and is still a household member, his/her income **must be** included in annual income.
2. If the temporarily absent family member may no longer be considered a member of the household, his or her income **would not be** included in annual income.
3. It should be noted, as per the example in Paragraph 5-6B(3), residents who are in the Armed Services should be kept on the unit lease only if they are the head, co-head or spouse or if a spouse or dependent remain in the unit. Otherwise, a temporarily absent individual on active military duty must be removed from the unit lease.
4. Any income of a temporarily absent head, co-head, or spouse must be included in Annual Income.

G. INCOME OF PERSONS PERMANENTLY IN A HOSPITAL OR NURSING HOME

Households including such persons may choose to include any income such persons receive in the household's annual income and similarly claim any allowances for which the absent family member qualified, or may choose to exclude both income and allowances associated with the absent family member. Note that family members permanently confined to a hospital or nursing home may not be designated head, co-head, or spouse.

H. PERIODIC PAYMENTS FROM LONG –TERM CARE INSURANCE, PENSIONS, ANNUITIES, AND DISABILITY OR DEATH BENEFITS

The full amount of those periodic payments received by residents from annuities, insurance policies, retirement funds, pensions, disability or death benefits is included in annual income. Any payment in excess of \$180 per day received by a resident from long term care insurance is counted as income.

I. WITHDRAWAL OF CASH OR ASSETS FROM AN INVESTMENT

A resident who receives periodic payments in the form of withdrawn cash or assets from an investment will have those payments included as annual income. Lump sum receipts from pension and retirement funds are counted as assets. If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset.

J. EXHIBIT 5-1, INCOME INCLUSIONS AND EXCLUSIONS

For the finer points of policy on Annual Income it is necessary to refer to Exhibit 5-1, Income Inclusions and Exclusions. The Exhibit provides a very thorough and clear presentation of specific regulatory and statutory inclusions to and exclusions from annual income, along with regulatory references.

K. VERIFICATION OF ANNUAL INCOME

Appendix 3, *Acceptable Forms of Verification*, supplies essential information on the verification requirements for various sources of income included in annual income. Make sure the verification forms and consents you employ in your housing operation are in compliance with the requirements stipulated in Appendix 3.

ANNUAL INCOME MINI QUIZ

1. The list of annual income inclusions and exclusions is found in Exhibit ____.

Terry and Donna Poquette are a young married couple residing in a Section 8 complex. Terry works at a fast food restaurant and Donna also works there part-time while attending the local hairdressing academy as a full-time student.

- TRUE 2. Both Terry's and Donna's employment incomes must be included in the family's
FALSE annual income.

- TRUE 3. A family whose sole source of income is payments for the care of foster
FALSE children will show zero annual income.

4. Alonzo Dawkins, age 74, resides in a Section 8 elderly complex. He has \$3,100 in a savings account earning 2.50% interest and \$297.00 in a checking account, which earns no interest. Mr. Dawkins receives a Social Security benefit check with a net amount of \$498.00 per month. A deduction of \$104 has been deducted to pay for his Medicare premium. In addition, Mr. Dawkins receives a pension of \$235.00 per month from the newspaper he worked at as a custodian for 40 years. Using the following forms, compute Mr. Dawkins' annual income. For the purpose of this and other exercises, round DOWN at \$.49 and UP at \$.50.

RENT COMPUTATION WORKSHEET

ASSETS

Asset Type	C/I	Cash Value	Interest Income
		\$	\$
		\$	\$
		\$	\$
Total Cash Value		\$	\$ Total Interest
If total cash value exceeds \$5,000, multiply the total amount by 2% to determine imputed income.			
Passbook Rate	2%		
Imputed Income	\$		
TOTAL ASSET INCOME		\$	(Greater of Imputed or Interest Income)

INCOME

Family Mbr.	Income Source	Income Amount	Care Code (C, H, CH)
		\$	
		\$	
		\$	
		\$	
TOTAL INCOME		\$	

ANNUAL INCOME	\$
(Asset Income plus Total Income)	

CHAPTER 16

ALLOWANCES AND ADJUSTED INCOME

Allowances and adjusted income are discussed in the 4350.3 REV-1, Chapter 5, Section 2, Paragraphs 5-9 through 5-10. Exhibit 5-3 contains a list of examples of eligible medical expenses. The Long Term Care Insurance Certification Form is found in Exhibit 5-4.

I. INTRODUCTION

Allowances are an important part of the rent computation process. A good faith effort to identify all the allowances that a family qualifies for can make a real difference in their ability to pay rent, and if a family can verify its qualification for allowances, it is entitled to them. Allowances (especially the medical expense deduction) can be a bit verification-intensive, but if our lawmakers have chosen to make them part of the rent computation process for assisted housing tenants, it is incumbent upon those of us working in assisted housing to make a diligent attempt to explain the allowances to applicants and tenants so that they understand the benefits of claiming legitimate, verifiable allowances, and can obtain the necessary verifications to qualify for all allowances applicable to their situation. **Remember that allowances are not figured for BMIR tenants, since their rent is based only on their annual income, not their adjusted income. Remember, too, to observe the rounding procedures set forth in Appendix 8, Data Entry Rules For The 50059 Data Requirements, which stipulate that you wait until you have arrived at the total annual amount before rounding and then round down at \$.49 and up at \$.50.**

4350.3 REV-1
Paragraph 5-9
(pg. 5-41)

A. ALLOWANCES/ADJUSTED INCOME

Adjusted income is obtained by subtracting the allowances a family qualifies for from its annual income. At the present time, there are **five** allowances a family

might qualify for, based on its circumstances. The first three allowances are potentially available to all assisted families:

1. The dependent deduction;
2. Child care expenses; and
3. Disability assistance expenses.

Two additional allowances are available only to families that have a head, co-head, spouse, or sole member who is 62 or older, or disabled. They are:

4. A \$400 deduction (sometimes called the "*elderly household*" allowance); and
5. Medical expenses.

Let's examine each one of these allowances in turn so that we can see the requirements pertaining to each allowance, how the allowance is computed, etc.

4350.3 REV-1
Paragraph 5-10
(pg. 5-41)

B. THE DEPENDENT DEDUCTION

The dependent deduction is made available to all household members **other than head**, co-head, spouse, foster children, live-in attendants, unborn children, or children not residing with the family, even if legal custody is currently being pursued, who are either:

- under age 18 (17); or
- 18 and over and disabled or a full-time student.

A family receives a deduction of \$480 per dependent.

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

1. VERIFICATION OF DISABILITY, OR FULL-TIME STUDENT

Likewise, full-time student status must be verified with the educational institution, which the family member is attending.

- It is not required that a student be enrolled in an academic program in order to qualify as a full-time student--vocational, certificate, and high school equivalency programs may satisfy the requirement as well, as long as the institution has a degree or certificate program.

2. THIS DEDUCTION CAN BE COMPLICATED

Even a deduction as apparently straight-forward as the dependent deduction can be tricky in some instances, especially when you are dealing with multi-generational households. An example may help to illustrate some of the subtleties that can be encountered from time to time.

EXAMPLE:

The McGill family consists of head, Sheila, age 51, her disabled daughter Bess, age 21, Bess's husband, Dave Potts, age 27, and the young couple's baby son, Wilson, age 2. How many dependents are there in the McGill household? How many dependents would there be if Dave were head?

ANSWERS ARE AS FOLLOWS:

With Sheila head, the family has two dependents--Bess and Wilson. Wilson qualifies by virtue of being under age 18 and Bess qualifies as a household member, other than head, spouse, foster children, or live-in attendant who is 18 or over and disabled. You may contend that Bess is the spouse, but with Sheila as head

of the household, Bess is not the spouse of the head of the household.

With Dave as the head of household, the family has only one dependent, Wilson. Bess no longer qualifies as a dependent because she is the spouse of the head of the household; and head, or spouse, never qualify as dependents; regardless of age, disability or full-time student status.

4350.3 REV-1
Paragraph 5-10B
(pg. 5-42)

C. THE CHILD CARE EXPENSES ALLOWANCE

The allowance for child care may be claimed when expenses are incurred for the care of household members under age thirteen (12 and under), including foster children, **where the cost of such care permits a family member to work, go to school, or seek work.** Child care payments for children not residing in the unit may not be claimed, nor may the cost for care of children or disabled family members age thirteen or older (if a disabled household member needs care to enable an adult household member to work, that expense is considered a disability assistance expense).

1. Eligible Expenses May Not:

- a. Be paid to a member of the household;
- b. Be incurred for periods during which there is an adult household member at home who could provide the care. **Note: The family makes the determination as to whether the adult who is at home could provide the care;**
- c. Pre-paid or reimbursed by agencies/individuals outside the household.

2. Additional Limitations:

- a. Where care is provided for household members in addition to those eligible for the child care expense allowance, the total cost of care must be prorated so that only those costs for eligible household members under age thirteen are claimed.
- b. Where childcare expenses are being incurred to permit a family to earn employment income, the amount of expense claimed may not exceed the employment income made possible by the care. **Note: that where full-time students claim childcare expenses for periods during which they are working, the maximum child care allowance shall not exceed \$480.** The allowance is not meant to encourage families to work a job at a loss.
- c. Child care costs of a full time student who is working, and is not the head, co-head or spouse is limited to \$480.
- d. Child care costs shared by two different assisted families with shared custody can be split, upon verification.

Note: Refer to Appendix 8 to understand how to round.

4350.3 REV-1
Paragraph 5-10C
(pg. 5-44)

D. THE DISABILITY ASSISTANCE EXPENSE ALLOWANCE

This allowance is available only to families paying for care/apparatus for a disabled family member (who meet the eligibility definition) where the cost of such care/apparatus permits an adult family member (including the disabled family member) to work. The amount of the allowance is equal to the *lesser* of:

- Total verified expenses for the 12 months covered by the certification or recertification minus 3% of annual income (**not** 3% of the employment income); or
- The amount of employment income made possible by the cost of the care or apparatus.

1. ADDITIONAL LIMITATIONS

- a. Only expenses that are necessary to permit an adult to work are eligible for the allowance. Where expenses are incurred for apparatus for a disabled family member, **remember that such apparatus must result in employment income for the family**, either in permitting the disabled family member to work, or in freeing-up another family member to work who would otherwise have to provide care for the disabled family member. The Handbook also notes that if the cost of care or apparatus makes employment income possible for more than one family member, the employment income cap applied to the allowance should be the sum of **all** employment income made possible by the care or apparatus. Unlike the child care allowance; there is no provision for allowing costs incurred to permit a family member to further his/her education.
- b. Only costs which will be paid by the family (not pre-paid or reimbursed by an outside agency or individual) may be claimed.
- c. Expenses for care paid to a household member may not be claimed.
- d. Expenses Must Be Prorated under Certain Circumstances and in Others May Not Be Allowed

4350.3 REV-1
Paragraph 5-10C
(2) and (3)
(pg. 5-44)

The 4350.3 REV-1 outlines some complicated scenarios in which the

disability expenses allowance must be prorated because non-disabled family members are also provided care. The point is made too, that if a family is claiming both child care and disability expenses against a single source of income, the total combined amount of such expenses claimed, may not exceed the employment income made possible by the care.

4350.3 REV-1
Paragraph 5-10C
(4) (pg. 5-45)

E. ATTENDANT CARE AND AUXILIARY APPARATUS

Excellent guidance is provided here which indicates that, in the instance of attendant care, the cost of housekeeping or errand services, sign language interpreters, or a reader for a visually impaired person would all be eligible expenses, provided they resulted in employment income for an adult family member. It should be noted that the list of eligible attendant care types presented in the Handbook is not all-inclusive, so it is possible that there would be eligible types of care not listed in the 4350.3 REV-1.

The 4350.3 REV-1 makes an important distinction between "*auxiliary apparatus*," for which the applicant/tenant must pay in order to qualify for the disability expense allowance, and "*auxiliary aids*," which assisted housing owners are required under 504 to provide for their residents, applicants, and employees or job applicants who are disabled. As noted in Chapter 1 of this Manual, assisted housing owners are not required to provide individually prescribed auxiliary aids or assistive devices for persons with disabilities. However, such individually prescribed devices could qualify for the disability expense allowance; provided they were being paid for by the family and they resulted in employment income.

Paragraph 5-10C(4)(b) provides an additional important point of clarification with regard to expenses for auxiliary apparatus:

"The cost of maintenance and upkeep of an auxiliary apparatus is considered a disability assistance expense (e.g., the veterinarian costs and food costs of a service

animal; the cost of maintaining the equipment that is added to a car but not the cost of maintaining the car)."

We can see from this statement that the costs for an auxiliary apparatus are not necessarily a one-shot expense, but may be incurred over time as the need for maintenance of the device or assistive animal is required. (See next section for treatment of one-time nonrecurring expense.)

4350.3 REV-1
Paragraph 5-10D
(pg. 5-46)

F. THE MEDICAL EXPENSE ALLOWANCE

Only families in which the head, co-head, spouse, or sole member is 62 or older, or disabled may qualify for the medical expense allowance. Like the disability assistance expense allowance, the medical expense allowance is equal to **total verified medical expenses** for the twelve months covered by a certification/recertification for all family members, **minus 3% of annual income**.

1. IF FAMILY CLAIMS BOTH DISABILITY ASSISTANCE EXPENSES AND MEDICAL EXPENSES

In instances in which a family is claiming both disability assistance expenses and medical expenses, 3% of annual income is deducted once from the sum of the two types of expenses. The Handbook provides an example on Page 5-51 to help you understand the thought process on such a computation.

2. LIMITATIONS ON THE DEDUCTION

As with disability assistance expenses and childcare expenses, only those expenses may be claimed which are not prepaid or reimbursed by an outside source. EXHIBIT 5-3, EXAMPLES OF MEDICAL EXPENSES, provides a list of eligible medical expenses. It does not appear that the list is intended to be all-inclusive--it is possible that a family might incur medical expenses of a type not specifically listed there.

3. ONE TIME, NONRECURRING EXPENSE

In addition to anticipated expenses, past one-time nonrecurring medical expenses that have been paid in full may be included in the calculation of the medical expense deduction for current tenants at an initial, interim or annual recertification.

Past one-time nonrecurring medical expenses that have been paid in full are not applicable when calculating anticipated medical expenses at move-in. If the tenant is under a payment plan, the expense would be counted as anticipated medical expense. The example in Paragraph 5-10-D on Page 5-48 of the Handbook illustrates this process.

4350.3 REV-1
Paragraph 5-10E
(pg. 5-50)

G. THE \$400 DEDUCTION

As with the medical expense allowance, this deduction is made available to all households with a head, co-head, spouse, or sole member who is 62 or older, or disabled. **The deduction is made only once per eligible household whenever a rent is computed** -- each eligible household member does not get a \$400 deduction. If you remember when we discussed eligible family composition and 504 and Fair Housing (Chapters 4 and 1 of this Manual, respectively), we noted that under 504, persons with disabilities may only be required to identify themselves as such, in instances where program eligibility is based on their disability. Similarly, families in which the head, co-head, or spouse is not 62 or older, and who wish to claim the \$400 deduction or medical expenses allowance, must be able to verify that either the head, co-head or spouse of the household is disabled.

In the same way, families wishing to claim the disability expenses allowance must be able to verify the disability of the family member for whom care or apparatus is being provided. It is entirely possible that a family for whom you had not previously identified any disabled members may choose to identify one or more members as disabled in order to qualify for these allowances.

That is the family's prerogative, just as remaining silent about a family member's disability is the family's choice when it has no bearing on program eligibility.

ALLOWANCES AND ADJUSTED INCOME MINI QUIZ

- TRUE 1. Section 504 does not permit owners of assisted housing to require families
FALSE wishing to claim disability assistance expenses to verify that the family member for whom the expenses are being incurred has a disability.
2. Rowena Dawson lives in the Braxton Apartments with her 19-year-old daughter, Janice, and three foster children, Vanessa, 16, Sharonda, 13, and Tyree, 9. The number of dependents in the Dawson household is ____.
- TRUE 3. An elderly household who paid for out of pocket expenses for open heart
FALSE surgery may choose to wait until their next annual recertification to report the expense and have it included as part of their total medical expenses.
4. The Watson family is undergoing their annual recertification. The family consists of head Bonita, age 32, and her four children, Dexter, 13, Lewis, 11, Terry, 9, and Alice, 5. Bonita works full-time (assume 40 hours per week) at the Post office for \$9.75/hour. During the school year (37 weeks per year) Bonita pays a neighbor \$4.00/hour to look after all four of her children for two hours/day on schooldays, in between the time they get home from school and she gets home from work. In the summer months, Bonita drops off the kids with her parents, who care for them free of charge, and picks them up after work each day. The Watsons have \$413.00 in a savings account, earning 2.25% interest, and \$178.00 in a non-interest-bearing checking account. Compute the Watson's annual income and adjusted income.

ASSETS

Asset Type	C/I	Cash Value	Interest Income
Checking		\$	\$
Savings		\$	\$
		\$	\$
Total Cash Value		\$	\$
Total Interest			
If total cash value exceeds \$5,000, multiply the total amount by 2% to determine imputed income.			
Passbook Rate	2%		
Imputed Income	\$		
TOTAL ASSET INCOME	\$	(Greater of Imputed or Interest Income)	

INCOME

Family Mbr.	Income Source	Income Amount	Care Code (C, H, CH)
		\$	
		\$	
		\$	
		\$	
TOTAL INCOME		\$	

ANNUAL INCOME	\$
(Asset Income plus Total Income)	

DEDUCTIONS

Dependent Deduction	\$
Child Care for Work	\$
Other Child Care	\$
Total Handicapped Expenses	\$
3% of Annual Income	\$
Handicapped Deduction	\$
Total Medical Expenses	\$
Remaining 3% of Annual Income	\$
Medical Deduction	\$
Elderly Family Deduction	\$
Total Deductions	\$
Adjusted Income	\$

CHAPTER 17

VERIFICATION REQUIREMENTS

Verification requirements are presented in the 4350.3 REV-1 Chapter 5, Section 3, and Paragraphs 5-11 through 5-23 and in Chapter 9, Enterprise Income Verification (EIV). Refer also to Appendix 3, Acceptable Forms of Verification. Appendix 6 is a set of instructions and a sample Verification Consent Form. Exhibit 5-6 is a copy of the 9887-A Consent for Release of Income Information Form and Exhibit 5-7 is the HUD Fact Sheet Verification of Information Provided by Applicants and Tenants of Assisted Housing.

I. INTRODUCTION

You are required to verify everything involved in determining initial and ongoing eligibility for assistance, admissions preferences, and everything involved in computing rent for the assisted housing programs covered by the 4350.3 REV-1. The Handbook presents a thorough explanation of the various verification requirements, methods of verifying information, required forms to provide to residents, and what happens when residents refuse to sign verification forms. Because verified information is required by federal law, and because it is an ongoing critical part of the work of everyone involved in assisted housing occupancy, it makes sense to become familiar with the various verification requirements set forth in the 4350.3 REV-1.

4350.3 REV-1
Paragraph 5-13
(pg. 5-54)

A. METHODS OF VERIFYING INFORMATION

In general, information can be verified in four ways:

- ❖ Upfront-income verification (UIV)
- ❖ Third-party verification from source (written);
- ❖ Third-party verification from source (oral); or
- ❖ Family certification.

1. Upfront-income verification (UIV)

This verification should be used before or during a certification and/or recertification and is obtained through an independent source. There are two types of UIV.

- (a) HUD's EIV system which is **required** for owners to use as the third-party source to verify employment and income information for tenants, but it is unavailable to use for applicants.
- (b) Non-EIV system which includes The Work Number and other state government databases. An owner **may** use this type of system to verify income:
 - (1) Of applicants;
 - (2) When no employment or income is available in EIV
 - (3) For other types of income received by the family.

2. Third-party verification from source (written)

An original or authentic document generated by a third party source that is dated within 120 days from the date of receipt by the owner. These documents may be in the possession of the tenant/applicant, and are commonly referred to as tenant-provided documents. They are considered third-party verification because they originated from a third-party source.

Examples of tenant-provided documentation may include pay stubs, payroll summary report, and employer notice/letter of hire/termination, SSA benefit letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

Owners **must** consider the following when using tenant-provided documentation:

- (a) Is the document current?
- (b) Is the documentation complete?
- (c) Is the document an unaltered original?

Written third-party verification from the source also includes written documentation sent directly by the third-party source by mail or electronically by fax, email or internet.

- (a) The owner may obtain accurate third-party written verification by facsimile, email, or internet, if adequate effort is made to ensure that the sender is a valid third-party source. Steps to do this are found on page 5-56 of the 4350.3.

NOTE: In Appendix 3, Change 4 states that *'Requests for verification from a third party source must be accompanied by a Consent to Release form HUD-9887-A.'*

3. Third-party verification from source (oral).

4. Family Certification

As a verifier of last resort, the owner may accept a notarized statement or signed affidavit from the applicant as verification of information. The owner may witness the tenant signature(s) in lieu of a notarized statement or affidavit.

5. Confidentiality of Information

Remember, as per the requirements of HUD Notice H 9887 and Form HUD 9887-A (found in Exhibit 5-6), and the Privacy Act, there are strict guidelines setting forth procedures for ensuring the privacy of information collected.

4350.3 REV-1
Paragraph 5-16B
(pg. 5-60)

B. EFFECTIVE TERM FOR VERIFIED INFORMATION

1. Information not subject to change, such as date of birth or Social Security number, need be verified only once.
2. Verification of information subject to change, like income, is valid for 120 days from the date of receipt by the owner, not the effective date of the 50059. Verified information subject to change, which is more than 120 days old from the date of receipt by the owner, must be re-verified.

3. For annual recertifications, everything involved in computing rent must be re-verified. Thus, it will once again be necessary to obtain consents for release of income information from all household members age 18 and older, as you did when initially certifying the family.
4. It is not necessary to reverify the Social Security numbers from any household members for whom you have already collected that information
5. The Handbook informs us, in Paragraph 5-22, that at interim recertifications, it is necessary to verify only information, which has changed since the last interim or annual recertification. You should not verify any information that has not changed.

4350.3 REV-1
Paragraphs 5-15
(pg. 5-57)

**C. REQUIREMENTS FOR APPLICANTS/TENANTS TO SIGN
VERIFICATION CONSENTS**

**1. Documents which Must Be Signed by the head, co-head, spouse
and all other adult family members**

- a. Form HUD-9887, Notice and Consent to the Release of Information
- b. Form HUD-9887-A, Applicant's/Tenant's Consent to the Release of Information
- c. Individual verification consents for all information needed to determine program eligibility or compute rent.

**2. Information on the Consents which must be Supplied to
Applicants/Tenants**

- a. Families must, in all instances be provided with The HUD Fact Sheet entitled *"Verification of Information Provided by Applicants and Tenants of Assisted Housing,"* along with signed Forms 9887 and 9887-A, and a copy of the HUD-9887/A Fact Sheet. Families must also receive a

copy of the Resident Rights and Responsibilities Brochure and a copy of the EIV & You Brochure, both at move-in and at each annual recertification.

- b. Upon request by the family, owners must supply them with a copy of the relevant verification consents that the adult family members signed.
- c. Reasonable accommodation must be made for applicants or tenants, who, because of disability, are not able to sign the documents, understand the requirement, or otherwise comply with the requirement without assistance.
- d. Owners must inform applicants/tenants of information obtained by consent and a chance to dispute information received which they believe to be in error, in accordance with procedures set forth in the lease.

3. Social Security and SSI

Upfront income verification through EIV is the method used by owners to confirm Social Security and SSI income amounts for tenants. If the tenant does not agree with the information in EIV, or if the owner is attempting to verify Social Security or SSI income on an applicant, the owner must obtain third-party verification.

4. Owners Actions when a Family Fails to Sign Consents

The various responses an owner must take, when a family or any member of the tenant's family, either through no fault of its own, or willfully does not sign the required consents, are set forth in paragraph 5-21.

- Applicants shall be denied assistance for failure to sign the 9887 or 9887-A or the owner's verifications.
- Residents shall have their assistance terminated for failure to execute the consent forms.
- In a 202 or 811 PRAC, the resident may be evicted for refusal to sign the required forms.

5. Information Inconsistent with the Applicant's/Tenant's Representations is Received

The course of action to take is presented in paragraph 5-17, which points out that any decision to suspend or terminate assistance must be made in accordance with guidelines set forth in Chapter 8 of the 4350.3 REV-1 and the Lease, and such action cannot be taken until the owner has independently investigated the information.

6. Record Keeping Requirements

These are set forth in Paragraph 5-23.

VERIFICATION REQUIREMENTS MINI QUIZ

- TRUE 1. Once a family has signed consents for release of income information prior to
FALSE move-in, the requirement is satisfied for the entire time they will be residing
in assisted housing.
- TRUE 2. It is permissible for a housing owner to copy information received from a
FALSE third party over the phone onto a verification form and sign the third party's
name.
- TRUE 3. The clock starts running on the valid time period of verified information subject
FALSE to change on the date the verifier signs the form.

CHAPTER 18

THE LEASE

The lease is discussed in the 4350.3 REV-1, Chapter 6, Section 1, Paragraphs 6-3 through 6-12. The VAWA regulations are contained in Paragraph 6-5G. Appendix 4 contains the set of HUD Model Leases: 4A is the Family Model Lease; 4B is the Model Lease for the 202/8 or 202 PAC; 4C is the Model Lease for the 202 PRAC; and 4D is the Model Lease for the 811 PRAC. In addition, Exhibit 6-1 contains the Required State Agency Lease Provisions; Exhibit 6-4 is the set of Mandatory and Discretionary Pet Rules; and Exhibit 6-5 gives guidance on How to Develop Pet Rules.

I. INTRODUCTION

The HUD Model Lease, as presented in the 4350.3 REV-1, is an example of one of the ways in which the 4350.3 REV-1 originally sought to standardize policies and procedures for the various assisted housing programs it covered. By stipulating the use of one lease for the various assisted housing programs, the 4350.3 REV-1 created a standard rental contract to be used throughout the U.S. for just about all of the privately-owned assisted housing programs. This provided some real advantages in terms of ensuring uniformity in the way the housing programs were being operated throughout the country, and simplified audits pertaining to lease requirements.

Since the lease is the contractual basis of the tenant--housing owner relationship, it is necessary for anyone managing housing to become familiar with its language and requirements. Often managers may go for years signing leases without taking the time to acquaint themselves with the contents of the lease. Inevitably, though, there comes a time when the lease language becomes very important--perhaps when an eviction is being sought or the manager is being sued for nonperformance under the lease. Why wait until a crisis occurs to learn the lease? It is much better to familiarize yourself with it when things are going relatively smoothly, so that when problems **do** arise, you are already prepared to deal with them.

A. GENERAL LEASE REQUIREMENTS

The lease requirements presented in this section of the Handbook address both the lease and lease attachments, including the lead-based paint disclosure form, house rules and pet regulations. Some of the language pertaining to lease requirements, such as the information on meals programs is highly technical. Other parts of the language are broader in their application. The following main points stick out:

1. Assisted tenants (those paying less than Market Rent) must use a lease in compliance with the requirements set forth in Paragraph 6-4B:
 - ❖ Family Model Lease – Appendix 4A;
 - ❖ 202/8 or 202 PAC Lease – Appendix 4B;
 - ❖ 202 PRAC Lease – Appendix 4C; or,
 - ❖ 811 PRAC Lease – Appendix 4D.
2. All adult household members must be listed on the lease and all adult household members must sign the lease.
2. A lease is tied to a particular housing unit. If a family transfers, they must execute a new lease on their new unit.

NOTE: The HUD model leases are available in English as well as several other languages and are posted on HUDCLIPS and at HUD's LEP website.

B. FORM OF THE LEASE

This Paragraph establishes separate program-specific lease requirements for housing projects financed by state Housing Agencies, cooperatives, as well as the Model Leases. It further notes the instances in which local HUD offices or a Contract Administrator might approve modifications of the lease language, and outlines changes to the lease language that would not be approved. In general, lease modifications can be made so long as the change is required or recommended based on HUD instruction or prior approval is obtained from HUD or a Contract Administrator, and the changes:

1. Are in compliance with state landlord/tenant law where a project is located;
2. Reflect property management practices commonly in use in the project's market area; and
3. Do not delete or alter any of the lease's language pertaining to administration of HUD rules or housing assistance.

Figure 6-2 in the 4350.3 REV-1 provides an excellent resource of identifying the forms of the lease and corresponding subsidy programs.

Figure 6-2: Required Leases	
Form of Lease	Programs that Use the Lease
Model Lease for Subsidized Programs (Family Model Lease) (See Appendix 4-A.)	Section 221(d)(3) BMIR Section 236 Section 8 New Construction Section 8 Substantial Rehabilitation Section 8 State Agency (See Paragraph 6.5F) RHS 515 with Section 8 (See Paragraph 6.5 F) Section 8 Loan Management Set-Aside (LMSA) Section 8 Property Disposition Set-Aside (PDSA) Rental Assistant Payment (RAP) Rent Supplement
Model Lease for Section 202/8 or Section 202 PACs (See Appendix 4-B.)	Section 202 Programs for the Elderly and Persons with Disabilities in conjunction with Section 8 assistance Prepaid Section 202/8 Loans
Model Lease for Section 202/8 or Section 202 PACs (See Appendix 4-B.)	Section 202 Programs for the Nonelderly Disabled Families and Individuals in conjunction with Section 162 assistance
Model Lease for Section 202 PRACs (See Appendix 4-C.)	Section 202 Program of Supportive Housing for the Elderly
Model Lease for Section 811 PRACs (See Appendix 4-D.)	Section 811 Program of Supportive Housing for Persons with Disabilities
A model lease developed by a State Agency that complies with HUD rules and regulations	Section 8 State Agency
Occupancy Agreement	Assisted Cooperatives

The following attachments to the Model Lease are required:

1. HUD-50059 signed by the resident and owner;
2. HUD-50059-A signed by the owner, and when applicable, by the tenant
3. Move in inspection report signed by resident and owner;
4. House Rules, if such rules have been developed by the owner;
5. Lead-Based Paint Disclosure Form (as applicable);
6. Pet Rules (as applicable); and,
7. Owner's Live-In Aide Addendum (as applicable);
8. Owner's Police or Security Personnel addendum (if applicable);
9. HUD issued Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA) Lease Addendum (Section 8 only)

C. REQUIREMENTS OF HUD ISSUED LEASE ADDENDUMS

Violence Against Women (VAWA) – Section 8 Only

Owners must attach the HUD-approved lease addendum. The addendum must be signed by all tenants requirement to sign the lease. Further requirements of VAWA are provided on Page 6-12 of the 4350.3. The VAWA protections were previously explained in Chapter 6 of this Manual.

C. THE LEASE TERM

The requirements for the different housing programs are addressed in Paragraph 6-6. Figure 6-4 provides the specific requirements for both initial and renewal lease terms. In general, an initial lease term would not be less than thirty days or at least a year or more. Renewal terms may be as short as thirty days or a month, or as long as a year.

Most housing owners, even for programs that require an initial lease term of at least a year, prefer to go for a month-to-month lease in subsequent terms. The month-to-month lease provides both owner and tenant with a more flexible arrangement. It just feels looser, even though there is nothing to prevent either person from terminating a longer lease term before its completion, if there is cause to do so.

D. LEAD PAINT DISCLOSURE FORM

Owners of properties built prior to January 1, 1978 are required to provide detailed information to all applicants concerning lead based paint. There are five categories of housing that are exempt from this disclosure requirement, including:

1. Properties constructed after 1/1/1978;
2. Properties found to be lead-free;
3. Zero-bedroom dwelling units;
4. Housing specifically designed for the elderly or disabled (housing no children under 6); or
5. Short term leases of 100 days or less.

DISCLOSURE REQUIREMENTS

The owner must furnish the resident with the following information before the initial subsidized lease is executed and when leases are renewed, modified or renegotiated if new information is received and the owner hadn't previously provided the information:

- ❖ The Lead Hazard Information Pamphlet, and
- ❖ The Lead-Based Paint Disclosure Form (Exhibit 6-3 in the 4350.3 REV-1) – this must be signed by the resident

The Disclosure Form satisfies three specific requirements:

- ❖ Disclosure of the presence of any known lead-based paint or hazards;
- ❖ Disclosure of information on lead-based paint and hazards;
- ❖ Lead Warning Statement.

E. HOUSE RULES

House rules are an attachment to the Model Lease. House rules are devised by the housing owner to address issues pertaining to the safety, care or cleanliness of the property or the safety or comfort of the residents. House rules do not require prior HUD approval before

implementation, but a 30-day notice must be given to residents before a house rule can be implemented and enforced.

4350.3 REV-1
Paragraph 6-
9B(2)
(pg. 6-21)

HOUSE RULES CONCERNING ABANDONMENT AND EXTENDED ABSENCE

The 4350.3 REV-1 addresses the issue of extended absence or abandonment of the unit and the owner's discretion to develop a policy in the House Rules that indicates when a resident loses their right to occupancy. HUD permits owners to commence termination of tenancy proceedings as a result of extended absence or abandonment of the unit by a resident.

If the owner chooses to develop a house rule policy addressing extended absence and/or abandonment, the following conditions must be met:

- ❖ The house rule must be consistent with state and local law.
- ❖ If state or local law does not define abandonment, the owner's rule must be consistent with state and local law regarding nonpayment of rent, the actions the owner will take to contact the resident, and define the handling and disposition of any resident belongings left in the unit.*
- ❖ Owners may establish a rule defining extended absence as longer than 60 continuous days, or longer than 180 continuous days for medical reasons, regardless of whether the resident is paying the rent. Owners should consider extenuating circumstances.

* HUD considers abandonment as: *"the tenant's failure to pay the rent due for the unit and failure to acknowledge or respond to notices from the owner regarding overdue rent."*

House Rules Concerning Tenants Conducting Incidental Business in their Unit

The 4350.3 Rev-1 allows the owner to establish house rules concerning tenants who conduct incidental business such as computer work, limited babysitting, etc. in their unit. These rules might cover such things as:

- ❖ Amount of foot/vehicle traffic associated with a business.
- ❖ Amount of noise allowable.
- ❖ Prohibition of signage.
- ❖ Use of parking
- ❖ Hours of operation versus the rights of other tenants.

While HUD does not require that house rules be submitted for review/approval before implementation, if HUD or the Contract Administrator finds out, either in the course of conducting an audit, or through tenant complaints, that a housing owner is enforcing house rules that conflict with or circumvent HUD requirements, HUD may require any house rules it determines to be contrary to HUD requirements to be stricken or modified so as to be brought into compliance with HUD rules.

4350.3 REV-1
Paragraph 6-10
(pg. 6-22)

F. PET RULES

Pet rules described in the handbook are applicable to properties for the elderly and disabled, not for family housing. While pet rules cannot be applied to assistance animals, the 4350.3 REV-1 does state that the owner may use state and local laws governing health and safety. Owners may also require the resident to be responsible for the care and maintenance of the assistance animal.

Pet rules establish the guidelines and policies governing the rights and responsibilities of residents who choose to have a pet. Exhibit 6-5 in the Handbook provides additional information on how to develop pet rules. We will review here the key requirements of pet rules and the lease provisions for pets.

4350.3 REV-1
Paragraph 6-10C
(pg. 6-23)

KEY REQUIREMENTS FOR PET RULES

As owners establish pet rules, they must make sure that the mandatory rules (as provided in Exhibit 6-4) are included; those include rules governing inoculations, sanitary standards, pet restraints, registration, and written notification to the pet owner if the owner refuses to register a pet.

The owner may add additional rules, which require the consultation of residents. Exhibit 6-5 provides insight in developing discretionary pet rules.

Owners may refuse to register a pet if:

- ❖ The pet is not a common household pet (see the Glossary for the list of common household pets);
- ❖ The keeping of the pet would violate house rules; or
- ❖ The pet owner does not provide complete registration information to the owner.

4350.3 REV-1
Paragraph 6-10D
(pg. 6-25)

LEASE PROVISIONS FOR PETS

The Handbook stipulates that the lease agreement for housing to serve the elderly or disabled must:

1. State that residents are permitted to keep a common household pet;
2. Include the pet rules by way of reference;
3. Include language that indicates the resident agrees to comply with the pet rules; and
4. State that the resident understands any violation of the pet rules may be grounds for removal of the pet or termination of the pet owner's tenancy, or both.

4350.3 REV-1
Paragraph 6-10E
(pg. 6-26)

VIOLATION OF PET RULES

When Pet Rules have been violated, the owner may provide the pet owner with written notice of the violation(s). The notice must allow the pet owner 10 days from the date of service of the notice to correct the situation, or to request a meeting to discuss the matter.

Should the pet owner request a meeting, it must occur no later than 15 days from the effective date of the notice. The owner may determine that a Notice of Pet Removal is required if both the owner and pet owner cannot resolve the pet rule violation or if the pet owner has failed to correct the violation within the timeframe authorized by the owner.

The owner is limited to commencing termination of tenancy for the resident to the following conditions:

- ❖ The pet owner has failed to remove the pet or correct the pet rule violation within the time frame; and,
- ❖ The pet rule violation is sufficient to begin termination of tenancy proceedings.

4350.3 REV-1
Paragraph 6-11
(pg. 6-27)

G. LEASE AMENDMENT FOR RENT CHANGES

HUD does not require a lease amendment to the Model Lease when a family's rent changes, although it is possible that state law may require such an amendment. A family is entitled to 30 days written notice before implementation of a rent increase except where the resident did not report changes in a timely manner. Such changes may include:

- Increase in income of \$200 or more per month
- Change in household composition
- Change in eligibility status of a student or non-citizen

Such notice must state the reason for the rent increase and state that it revises the rent entered in Paragraph 3 of the Family Model Lease.

4350.3 REV-1
Paragraph 6-12
(pg. 6-28)

H. MODIFYING THE LEASE

A lease change provided by HUD Headquarters through issuance of Notices or revisions to the 4350.3 must be incorporated into the lease and does not require HUD Field Office or Contract Administrator approval. However, the tenants must be given notice as outlined in Chapter 6.

Other modifications must be in the form of a lease addendum and must receive prior written approval of HUD or the Contract Administrator. Once modifications of the lease language have been approved, two copies of the changes are sent to each tenant at least 60 days prior to the projected implementation date. The lease modification must be accompanied by a statement explaining that the tenant can either choose to comply with the lease modification or move, and has thirty days to make the choice.

The choice to remain in the unit and comply with the lease modification is acknowledged by signing both copies of the lease modification and returning one to the housing owner. A negative response or no response within the thirty-day period gives the owner the right to initiate termination of tenancy procedures.

Leases in the following subsidy programs may not be modified:

1. Section 202/8;
2. Section 202 PACs;
3. Section 202 PRACs; and,
4. Section 811 PRACs.

I. FORM OF PAYMENT

Owners may insist on a guaranteed form of payment for the security deposit. Otherwise, owners must accept the tenant's personal check, unless the tenant has previously bounced a rent check to the owner. Tenants who have bounced rent checks may be required to pay their rent in a guaranteed form thereafter.

4350.3 REV-1
Paragraph 6-5C
(pg. 6-9)

J. FAMILY MODEL LEASE

The key provisions of the Family Model Lease agreement explain the thinking behind a number of the lease provisions. It makes it clear that all clauses in the Model Lease are not "*created equal*" in terms of their significance to the operation of HUD-assisted housing.

HUD also has prohibited lease provisions, which set forth several categories of lease language clauses that may not be added to the Model Lease (or house rules, since they are an attachment to the lease). All of the prohibited lease clauses come under the broad heading of "*Waiver of Due Process.*" As you read through them, you'll see that in many instances they involve the tenant admitting fault for actions/inactions **whatever** the findings of a court of law may be. Reading these clauses, it is no wonder that HUD chose to prohibit them--they could probably not be enforced in any case, but might be used to intimidate ignorant or unsophisticated tenants who were not aware of their rights under the law.

K. GUIDELINES FOR EDITING THE MODEL LEASE

Paragraph 6-5C(3) provides guidelines for editing the model lease. Working with these two documents together, let's work our way through the Model Lease, identifying those Paragraphs which may be changed to comply with state/local law or a market's property management practices, and those Paragraphs which may not be changed, since they pertain to the administration of HUD subsidies.

- *Paragraph 1: Parties and Dwelling Unit--may be modified
- *Paragraph 2: Length of Time (Term)--may be modified
- *Paragraph 3: Rent--may be modified
- *Paragraph 4: Changes in the Tenant's Share of the Rent--**may not** be modified.
- *Paragraph 5: Charges for Late Payments and Returned Checks--may be modified.
- *Paragraph 6: Condition of Dwelling Unit--may be modified
- *Paragraph 7: Charges for Utilities and Services--may be modified
- *Paragraph 8: Security Deposits--may be modified
- *Paragraph 9: Keys and Locks--may be modified
- *Paragraph 10: Maintenance--may be modified
- *Paragraph 11: Damages--may be modified
- *Paragraph 12: Restrictions on Alterations--may be modified
- *Paragraph 13: General Restrictions--may be modified
- *Paragraph 14: Rules--may be modified
- *Paragraph 15: Regularly Scheduled Recertification's--**may not** be modified
- *Paragraph 16: Reporting Changes Between Regularly Scheduled Recertifications—**may not** be modified
- *Paragraph 17: Removal of Subsidy--**may not** be modified
- *Paragraph 18: Tenant Obligation to Repay--**may not** be modified
- *Paragraph 19: Size of Dwelling--may be modified
- *Paragraph 20: Access by Landlord--may be modified
- *Paragraph 21: Discrimination Prohibited--**may not** be modified
- *Paragraph 22: Change in Rental Agreement--**may not** be modified
- *Paragraph 23: Termination of Tenancy--**may not** be modified
- *Paragraph 24: Hazards--may be modified
- * Paragraph 25: Penalties for Submitting False Information--**may not** be modified
- *Paragraph 26: Contents of this Agreement--may be modified

*Paragraph 27: Attachments to the Agreement--may be modified (what the attachments are **may not** be modified but rather content of house rules may be modified).

*Paragraph 28: Tenants' Right to Organize – may be modified

*Paragraph 29: Tenant Income Verification – may be modified

THE LEASE MINI QUIZ

TRUE 1. It is required to always provide tenants with 30-day notice prior to any
FALSE changes in the tenant's rent.

TRUE 2. Owners of 811 PRAC properties are permitted to modify their Model Lease.
FALSE

TRUE 3. In a 202 complex sponsored by a church group, it would be permissible to
FALSE make attendance at weekly church services a house rule.

The owner of the Aspen Apartments, a Section 8 family complex, has been burned on bad rent checks so many times that he has implemented a policy requiring rent payment by money order for all of his tenants.

TRUE 4. The owner's rent payment policy is in accordance with HUD policies.
FALSE

TRUE 5. An owner may refuse to register a pet when the pet owner fails to provide
FALSE complete registration information.

CHAPTER 19

SECURITY DEPOSITS AND OTHER CHARGES IN ADDITION TO RENT

Security deposits are discussed in the 4350.3 REV-1, Chapter 6, Section 2, Paragraphs 6-13 through 6-18. Figure 6-6 presents a chart listing the Amount of Security Deposit to Collect from the Tenant. Information on other charges in addition to rent can be found in Chapter 6, Paragraphs 6-19 through 6-25.

4350.3 REV-1
Paragraph 6-14
(pg. 6-31)

A. REQUIREMENTS

The 4350.3 REV-1 expands its treatment of Security Deposits in Chapter Six, Section Two. Accordingly, we find the following language from the Handbook in Paragraph 6-14, which addresses how owners should comply with new requirements.

If the security deposit now held by the owner met the HUD rules in effect at the time the deposit was collected:

- 1. An owner need not adjust the amount of the deposit to comply with current rules; and*
- 2. The HUD Field Office or the Contract Administrator may not reduce the Section 8 Special claims because the deposit does not meet current rules.*

Let's take a closer look at security deposits.

4350.3 REV-1
Paragraph 6-15
(pg. 6-31)

B. COLLECTION OF SECURITY DEPOSITS

While the collection of a security deposit prior to move-in is still suggested for some subsidy programs, we see where HUD has made it a requirement for other subsidy programs. Owners *must* collect a security deposit for the following subsidy programs:

1. Section 8 New Construction with an AHAP executed on or after November 5, 1979;

2. Section 8 Substantial Rehabilitation with an AHAP executed on or after February 20, 1980;
3. Section 8 State Agency with an AHAP executed on or after February 29, 1980;
4. Section 202/8;
5. Section 202 PAC
6. Section 202 PRAC; and,
7. Section 811 PRAC.

These security deposits must be collected at the time the initial lease is signed. An owner may collect the security deposit in installments. If the owner opts to collect the security deposit in installments, this must be indicated on the lease.

The amount of the security deposit is established at move-in in accordance with programmatic requirements, and so long as a family continues to reside in the same unit, is not adjusted or altered in any way to match fluctuations in the family's income. As much as the different HUD assisted housing programs have their own eligibility requirements, so do they have their own policies regarding the amount of the security deposit? These program-specific security deposit amounts are set forth in Figure 6-7.

4350.3 REV-1
Paragraph 6-15
(pg. 6-32)

C. FAMILIES THAT CANNOT AFFORD TO PAY A SECURITY DEPOSIT

Owners are not required to admit families who cannot afford to pay the security deposit required by the housing program at the time of move-in. If the owner agrees to permit a family pay off its security deposit in installments after moving in, the owner may be on the hook if the tenant vacates or is evicted before the security deposit debt is fully paid.

4350.3 REV-1
Paragraph 6-16
(pg. 6-33).

D. WHEN A FAMILY TRANSFERS

When a family transfers units, the owner has the option of keeping a running tab based on the original security deposit the family paid when they moved into the complex and any charges they have incurred against the deposit, or closing out the security deposit

account on the unit the family is vacating, and starting a new account, with a security deposit recomputed on the basis of the family's current circumstances, at the new unit. You may consider the second option. It makes more sense to close out accounts on the vacated unit--otherwise you may have the vacating tenant and the family moving into the unit **both** owing money on it.

4350.3 REV-1
Paragraph 6-18
(pg. 6-36)

E. SECURITY DEPOSIT REFUND PROCEDURES

The requirements place obligations on the tenant to leave a forwarding address when vacating the unit/project, or make arrangements to pick up the refund. The requirement does not apply in the 515/8, Section 8 LMSA, or Section 8 PDSA programs; owners will follow state law requirements.

Similarly, obligations are placed on the owner to present a written accounting of any charges deducted from the security deposit to the former tenant, provide an opportunity for the former tenant to meet and discuss any disagreements over charges brought against the security deposit, and refund any amounts due the former tenant no longer than 30 days after the tenant has moved out and returned the unit to the owner. Please be aware that the owner may be responsible to the tenant for financial damages in the event that a security deposit is not properly refunded.

The family has the right to request an informal meeting to dispute the amount of the security deposit refund. However, the informal meeting is not a requirement in the 515/8, and Section 8 LMSA and PDSA programs.

4350.3 REV-1
Paragraph 6-17
(pg. 6-35)

F. INTEREST ON SECURITY DEPOSITS

The language in Paragraph 6-17 is highly technical; once you have worked your way through it, you will find that the various housing programs covered by the 4350.3 REV-1, are grouped together and different sets of requirements apply. For instance, the **Section 8 New Construction, Section 8 Substantial Rehabilitation, and Section 8 State Agency** are subject to two sets of requirements, contingent on the execution of the AHAP. Also, 202/8 or 202 PACs have added conditions that speak to the issue of allocating interest on security deposits and record-keeping requirements.

Even if you work with a housing program that does not stipulate any requirements concerning interest on security deposits, you should consult your state Landlord/Tenant law--it is entirely possible that the state law speaks to the issue, even if HUD is silent.

G. OTHER CHARGES PRIOR TO MOVING INTO THE COMPLEX

4350.3 REV-1
Paragraph 6-20
(pg. 6-38)

The 4350.3 REV-1 does not permit the applicant to be charged any costs associated with the applicant screening process or processing eligibility information (though such costs are project-eligible expenses). Without HUD approval, the only permissible charges in addition to rent, which can be charged at move-in, are:

- The maximum acceptable programmatic security deposit
- The pet deposit (in full or installments based on program requirements)
 - Applies to properties serving the elderly and/or disabled

H. CHARGES AFTER MOVING INTO A COMPLEX

4350.3 REV-1
Paragraph 6-22
&23
(pg. 6-38)

1. The policy on charges for HUD-approved mandatory meals program in projects for the elderly or handicapped is addressed in Paragraph 6-22.
2. Charges for late payment of rent (Paragraph 6-23) are subject to the following restrictions; and note this provision does not apply to cooperatives:
 - a. They **may not** be assessed until a five-day grace period has elapsed.
 - b. Total late charges for a month **may not** exceed \$30.00.
 - c. Non-payment of late charges **may not** serve as grounds for evicting a tenant. However, any unpaid late charges could be deducted from the security deposit at the time of move-out.
 - d. Owners of section 202/8, 202 PAC, 202 PRAC and 811 PRAC Properties can not charge fees for late payments of rent.

4350.3 REV-1
Paragraph 6-24
(pg. 6-39)

3. Owners may require a pet deposit be paid by those residents in complexes for the elderly or disabled who own a dog or cat. The pet deposit to be paid by pet owners is in addition to the standard security deposit on the unit.

Assistance animals are animals that provide disability-related assistance, support, or provide service to persons with disabilities and are exempt from the pet policy and from the refundable pet deposit. (Nonetheless, owners of assistance animals can be held accountable for the care of such animals and liable for any damage such animals may cause to the unit or premises.)

Figure 6-8 in the 4350.3 REV-1 defines the maximum amount owners can collect for a pet deposit, which cannot exceed \$300.

OTHER CHARGES DURING OCCUPANCY

4350.3 REV-1
Paragraph 6-25
(pg. 6-40)

Owners may assess other charges to a resident as outlined in paragraph 6-25 B, C, D and E. Such charges may include:

- ❖ Checks Returned for Insufficient Funds
 - Does not apply to 202, 811 or 221(d)(3)BMIR programs
- ❖ Damages;
- ❖ Special Management Services – lock outs, extra keys, etc.; and,
- ❖ Court Filing, Attorney and Sheriff Fees.

Other charges may be assessed if such charges have been approved by HUD and are listed in the lease agreement and distributed to residents in accordance with lease modification procedures.

SECURITY DEPOSITS AND OTHER CHARGES IN ADDITION TO RENT MINI QUIZ

Milo Vanetti owns and operates the Biltmore Court, a 236 complex. When it came time for the Miltons, the family at the top of the waiting list, to move in, Mrs. Milton approached Mr. Vanetti and informed him that the family could not afford to cover its moving expenses and pay the security deposit. Mrs. Milton then asked Mr. Vanetti if he would be willing to set up a payment plan so that the Miltons could pay off the security deposit over time. Mr. Vanetti declined, saying he had been burned on payment plans in the past, and that if the family could not scrape together enough money to cover the security deposit, he would have to reject their application for housing.

- | | | |
|-------|----|--|
| TRUE | 1. | HUD policy in the 4350.3 REV-1 does not permit owners to reject applicants because they cannot afford to pay a security deposit. |
| FALSE | | |
| | | |
| TRUE | 2. | Charges for lockout calls are permitted. |
| FALSE | | |
| | | |
| TRUE | 3. | Owners of HUD-assisted housing must make security deposit refunds within the longer of 30 days or the time period stipulated in state or local law. |
| FALSE | | |
| | | |
| TRUE | 4. | One permissible way of dealing with tenants who do not pay charges for late payment of rent is to deduct the unpaid late charges from the tenant's next rent payment, and then pursuing eviction for nonpayment of rent, saying that the tenant didn't pay the rent in full. |
| FALSE | | |

CHAPTER 20

THE LEASING PROCESS

The Leasing Process is covered in the 4350.3 REV-1 in Chapter 6, Section 4, Paragraphs 6-26 through 6-30. A sample unit inspection form can be found in Appendix 5. Figure 6-9 contains a list of documents to be provided to the tenant at the briefing, and Exhibit 6-6 includes a comprehensive list of briefing topics.

4350.3 REV-1
Paragraph 6-27
(pg. 6-42)

A. BRIEF OVERVIEW

Although HUD does not require owners to perform a briefing with new residents, it is highly encouraged in the 4350.3 REV-1. Among the topics recommended to include in a briefing with new residents preparing to move into the apartment community are such lease requirements as:

1. Signatures;
2. The term of the lease (both initial and renewal);
3. Annual and interim recertifications;
4. Rent;
5. Security Deposit;
6. Attachments to the Lease, including the VAWA lease addendum for Section 8;
7. Other charges the property assesses in addition to rent;
8. Maintenance and damages;
9. Rights and responsibilities of residents (a copy of the Rights and Responsibilities Brochure must be provided to the head of household);
10. EIV and You brochure;
11. Penalties for fraud;
12. Termination of assistance and of tenancy; and,
13. General rules.

Exhibit 6-6 in the 4350.3 REV-1 provides a complete listing of briefing topics. The Handbook also includes a list of documents owners must, and in some cases may, give to the resident at time of briefing. Those documents, as found in Paragraph 6-30, Figure 6-9, include:

- ❖ The Lease with the HUD-50059 or HUD 50059-A
- ❖ Move in inspection form;
- ❖ Consent forms;
- ❖ Lead Paint Disclosure and Information documents (if applicable);
- ❖ House Rules (if developed);
- ❖ Pet Rules (if applicable);
- ❖ Police/Security Addendum (as applicable);
- ❖ Live in Aide Addendum (as applicable);
- ❖ HUD VAWA Lease Addendum (Section 8 only);
- ❖ EIV and You Brochure;
- ❖ Residents Rights and Responsibilities brochure; and the,
- ❖ How Your Rent is Determined Fact Sheet.

4350.3 REV-1
Paragraph 6-29
(pg. 6-44)

Also included is the Initial Notice for the following year's annual recertification is required.

B. UNIT INSPECTION REQUIREMENTS

For the housing programs covered by the 4350.3 REV-1, move-in and move-out unit inspections are required. In addition, owners are responsible for inspecting units at least once a year. HUD or HUD's agents inspect units as part of REAC and Management and Occupancy Reviews. Results of these inspections must be recorded on a form and documented. A sample move-in / move-out inspection form is provided in Appendix 5 of the 4350.3. You may want to use this sample as a reference when creating your own unit inspection forms.

1. MOVE-IN UNIT INSPECTION

The following requirements are set forth for the move-in inspection:

- a. It must be conducted prior to lease execution, and must be performed jointly by the owner/manager and the tenant.
- b. If additional cleaning or repairs to the unit will be required, a projected completion date, no more than thirty days after the lease execution date, must be entered on the unit inspection form.
- c. The form must state that the unit is in decent, safe and sanitary condition.
- d. Both the tenant and owner/manager must sign the unit inspection form. The unit inspection form is an attachment to the Model Lease. It is wise to wait until a unit is cleaned and most, or all, major repairs have been made before performing the unit inspection. For one thing, the unit will show to better advantage if it is clean and in a good state of repair. In addition, showing a dirty unit in a poor state of repair **may not** inspire confidence in a new resident that the project is properly maintained, or may communicate an unintended message that the project is very lax in its expectations of how tenants will care for their units.

2. THE MOVE-OUT UNIT INSPECTION

The move-out unit inspection may be performed either with the vacating tenant present, or by the manager alone. If the tenant is available, it is good ideas to have the tenant attend the move-out inspection, since it may head off disagreements about charges for damages to the unit that the owner may wish to deduct from the security deposit.

3. OTHER UNIT INSPECTIONS

Owners perform unit inspections on at least an annual basis to determine whether the appliances and equipment in the unit are functioning properly and to assess whether a component needs to be repaired or replaced. This is also an opportunity to determine any damage to the unit caused by the tenant's abuse or negligence and, if so, make the necessary repairs and bill the tenant for the cost of the repairs.

THE LEASING PROCESS MINI QUIZ

TRUE 1. Owners perform unit inspections on at least an annual basis.

FALSE

TRUE 2. The 4350.3 REV-1 requires the use of Appendix 5 as the unit inspection form to be employed at your housing complex.

FALSE

TRUE 3. Briefings are required for all new residents.

FALSE

CHAPTER 21

ANNUAL RECERTIFICATION

Annual recertification is presented in the 4350.3 REV-1, Chapter 7, Section 1, Paragraphs 7-1 through 7-8. In addition, annual recertification requirements are set forth in Paragraph 15, Regularly Scheduled Recertifications of the family model lease, Appendix 4. Notices to be employed in the annual recertification process can be found in Exhibits 7-1 through 7-6.

I. INTRODUCTION

The requirement for annual recertification of all tenants receiving housing assistance is one of the cornerstones of the occupancy rules governing HUD-assisted housing. Annual recertification helps to ensure that a tenant's rent accurately reflects his/her current financial circumstances and ability to pay. Therefore, it is important that housing owners recertify tenants on a timely basis.

Timely recertification is not only a function of when the housing owner begins the process. It is also a matter of whether tenants respond in a timely manner to requests for information needed to process recertifications, and what steps management takes when tenants do not respond timely. So it can be seen that annual recertifications can become a lease enforcement issue, too--a matter of whether the owner or manager has control of what is going on at a project.

4350.3 REV-1
Paragraph 7-4
(pg. 7-3 and 7-4)

A. KEY RECERTIFICATION REQUIREMENTS

Chapter 7 presents eight key requirements to the annual recertification requirements. Those requirements include:

1. Owners must recertify residents at least annually;
2. Tenants must supply information requested by the owner to complete the recertification;
3. Tenants must sign consent forms and asset declaration forms;

4. Owners must use the EIV Income Report as third party verification of employment and income unless the tenant disputes the information on the EIV Report;
5. Owners must obtain third party verification directly from third party sources for wages, unemployment and Social Security when the tenant cannot provide acceptable documentation or disputes the information in the EIV Report, as well as for sources not reporting income data to EIV, and for assets and deductions;
6. The owner must provide a copy of the HUD Fact Sheet and the EIV brochure to the resident at each annual recertification;
7. Owners have the option to require a criminal background check, including a State lifetime sex offender registration check;
8. Owners must perform annual recertifications on residents receiving subsidy, defined as:
 - a. Tenants on whose behalf the owner is receiving Rent Sup, RAP, or Section 8 assistance payments;
 - b. Tenants paying the BMIR Contract Rent;
 - c. 236 tenants paying either the Basic Rent or more than the Basic Rent but less than the Market Rent.

Conclusion: These then are the tenants who must be recertified annually. Residents paying contract or market rent and not receiving Section 8, RAP, Rent Supplement, or PAC assistance; families in a 236 property paying the 236 market rent; and residents living in a BMIR property who pay 110% of the BMIR rent are all not required to recertify.

4350.3 REV-1
Paragraph 7-5
(pg. 7-6)

B. TIMING OF ANNUAL RECERTIFICATIONS

Unless changed in accordance with procedures we'll discuss later in this section, the annual recertification date for residents is the first day of the month in which they moved into an apartment community.

Owners, after having obtained prior HUD approval, are permitted to set up alternate recertification schedules for any of their tenants for whom rent is computed on the 50059 Data Requirements.

Note: Some managers of small complexes prefer to recertify all their tenants for one effective date during the year because they have found that they prefer to confine the work associated with performing annual recertifications, to one three-month-plus period of the year, rather than dealing with annual recertifications year-round.

Remember, though, that if you wish to implement such a system at your project, even after having received HUD approval for your alternate schedule, you must make sure that in the course of implementation of the plan, no tenant goes more than a year without being recertified.

4350.3 REV-1
Paragraph 7-6
(pg. 7-8)
Figures 7-2
(pg. 7-6)
and 7-3 (pg. 7-10)

C. RECERTIFICATION PROCEDURES

In general, the following steps are required, keeping in mind that the 4350.3 REV-1 states:

“It is the owner’s responsibility to process all recertifications in a timely manner. HUD Headquarters will terminate a certification if a new recertification is not submitted within 15 months of the previous year’s recertification anniversary date.” The owner must then repay any assistance collected in the 3 month period from the date the recertification should have been effective.

1. Notification of the tenant in writing, 120 days in advance of the recertification anniversary date, of the need to schedule a recertification interview, so that the information needed to complete the annual recertification may be collected.
 - a. Where tenants do not respond timely to the first reminder notice to schedule a recertification interview, subsequent notice(s) must be sent in accordance with HUD requirements.
2. Conducting of a recertification interview, at which time current information on the tenant family's annual income, net family assets and allowances is collected.

- a. As per the requirements of HUD Notice H 94-73, all household members 18 and older must sign consents for the release of income information, as part of the annual recertification process.
3. Verification of information pertaining to annual income, net family assets and allowances. Owners must use the EIV Income Reports and Verification Reports.
4. In addition, in order for a family to continue to qualify for assistance, a verified Social Security number must be obtained for every household member, except for those who do not contend their eligible immigration status or whose members were 62 or older on 1/31/10 and whose initial eligibility was begun before 1/31/10.
5. Once the necessary verifications have been obtained, a HUD Form 50059 (Appendix 8) must be completed on the family, and the family's rent must be computed.
 - a. The head of the household, co-head, spouse, and all other adult family members must sign the completed HUD Form 50059.
6. Where the recertification has been completed in a timely manner, the tenant is entitled to at least 30 days written notice of any rent increase resulting from the recertification. HUD recommends that owners complete the recertification steps provided in Figure 7-3 at least 35 days before the anniversary date.

In instances where the recertification is late due to a tenant's failure to comply with recertification requirements set forth in the lease, it may be possible that the tenant has relinquished the right to a full 30 days notice of rent increase. We shall examine the various scenarios you may encounter around late recertifications momentarily.

D. NOTICES TO RESIDENTS

An overview of the required notices to residents is provided below.

1. Initial Notice – At lease execution and upon completion of each annual recertification, the initial notice is furnished to the resident. This notice must specify the cut off date for the resident, which is the 10th day of the 11th month after the last annual recertification.

The owner must obtain signatures and supply the resident with a copy of the notice. It is extremely important to impress upon tenants the fact that qualification for housing assistance is not a one-time requirement, but rather an ongoing requirement that must be satisfied every year in order for a family to continue to qualify for assistance. Sometimes, there is so much haste around the move-in process that ongoing programmatic requirements are not adequately stressed.

2. First Reminder Notice – Send to resident at least 120 days prior to the recertification date. This notice stipulates:
 - a. Cutoff date;
 - b. If the resident misses the cutoff date (the 10th day of the 11th month after the last annual recertification), the right to a 30 day notice in case of a rent increase is lost;
 - c. If the resident fails to respond by the recertification date, assistance will be removed and the family will pay Market Rent in a 236 property, 110% BMIR rent, or Contract Rent in a Section 8 or 202 PAC property; and
 - d. In a Section 202 PRAC or Section 811 PRAC project, the tenant may be evicted for noncompliance with the lease requirement to recertify annually.
3. Second Reminder Notice – Send to resident at least 90 days before the recertification anniversary date if the resident has not responded within 30 days of the First Reminder Notice. This notice contains the same required language as the First Reminder Notice.
4. Third Reminder Notice – Send to resident at least 60 days before the recertification anniversary date if the resident fails to respond following an additional 30 days. This notice also serves the purpose

of providing 60 days notice of a rent increase and termination of assistance.

Let's see how these notices work in the following chart.

Notice	Date the Notice is Due to the Tenant	Sample Timeline <i>Assumes a Dec. 1 Recertification Anniversary date</i>
Initial Notice	At initial lease-up and at every annual thereafter	December 1, 2013
First Reminder Notice	120 days prior to anniversary date	August 1, 2013
Second Reminder Notice	90 days prior to anniversary date	September 1, 2013
Third Reminder Notice	60 days prior to anniversary date	October 1, 2013

E. EFFECTIVE DATES OF CHANGES IN RENT AND HAP

As we examine the Handbook's regulations and guidelines concerning implementation of annual recertification procedures as well as effective dates of resulting changes in the housing assistance payment and rent, it becomes clear that the Department has provided more detailed instruction for owners to follow. In the paragraphs below, we will walk through five different scenarios of completing an annual recertification, and the impact each one has on the rent and housing assistance payment (HAP).

4350.3 REV-1
Paragraph 7-8B
(pg. 7-14)

SCENARIO ONE: RECERTIFICATION COMPLETED ON TIME

In the first example, the family reports before the cut-off date for their recertification interview. As a result, the owner has ample time to obtain the verifications, complete the recertification, and provide a 30-day written notice if the rent increases. All changes in the family's rent and the HAP take effect on the anniversary date. The example below illustrates this scenario.

- ❖ *Initial Notice given on 9/1/12; recertification date is 9/1/13*
- ❖ *First Reminder Notice sent on 5/1/13*
- ❖ *Family reports for recertification interview 6/1/13*
- ❖ *Recertification complete; 30 day notice of rent increase is sent to resident on 7/28/13*
- ❖ *Changes in rent and HAP take effect on 9/1/13*

SCENARIO TWO: RESIDENT REPORTS JUST BEFORE CUT-OFF DATE

This second scenario finds the resident reporting just prior to the cut-off date, which is still timely reporting by HUD's standards. Because the cut-off date is the 10th day of the 11th month after the last annual, the owner has time to process the recertification. The owner is responsible for completing the recertification on time. All changes to rent and HAP still take effect on the recertification date.

- ❖ *Initial Notice given on 9/1/12; recertification date is 9/1/13*
- ❖ *First Reminder Notice sent on 5/1/13*
- ❖ *Second Reminder Notice sent on 6/1/13*
- ❖ *Family reports for recertification on 6/25/13*
- ❖ *Cut off date is 7/10/13*
- ❖ *Recertification complete and rent change notice sent to family on 7/25/13*
- ❖ *Changes in rent and HAP take effect on 9/1/13*

The family is not penalized if the owner is unable to complete the recertification in a timely manner so as to provide the required 30-day notice on a rent increase. In such a case the resident is given a 30-day notice of any resulting rent increase.

SCENARIO THREE: DELAYS IN PROCESSING OF RECERTIFICATION BY OWNER OR THIRD PARTY

Tenants are never penalized for recertifications which are past due because actions/inactions of owners or third-party verifiers

caused the delay. In situations where a recertification is past due and the owner or a third-party caused the delays, if the tenant's rent increases once all the necessary information is collected, the tenant is entitled to a thirty-day notice of the rent increase, despite the fact that the recertification is already late. If, on the other hand, the owner or third-party causes a recertification to be late, and the resulting tenant rent is lower than the rent the family was previously paying, the recomputed, reduced rent becomes effective retroactive to the scheduled effective date of the recertification.

- *Initial Notice given on 9/1/12; recertification date is 9/1/13*
- *First Reminder Notice sent on 8/1/07 (the owner/agent failed to provide the required 120/90 and 60 day notices)*
- *Family reports for recertification on 8/20/13*
- *Recertification complete and rent change notice sent to family on 9/15/13*
 - *Changes in HAP and a rent decrease take effect on 9/1/07*
 - *Change in a rent increase effective on 9/1/13 (Resident rent cannot increase until the 30-day notice has been executed. The resident will begin paying the new rent on 11/1/13.)*

4350.3 REV-1
Paragraph 7-8D(2)
(pg. 7-17)

SCENARIO FOUR: RESIDENT RESPONDS AFTER CUT-OFF DATE AND BEFORE RECERTIFICATION DATE

This fourth scenario occurs when a family responds late, defined as after the cut-off date and before the anniversary date. In such cases, since the owner properly sent out the first, second, and third reminder notices, a 30 day notice of any rent increase has already been provided (in the Third Reminder Notice). Consequently, all changes in rent and the housing assistance payment are made retroactively back to the recertification anniversary date.

- ❖ *Initial Notice given on 9/1/06; recertification date is 9/1/13*
- ❖ *First Reminder Notice sent out 5/1/13*
- ❖ *Second Reminder Notice sent on 6/1/13*
- ❖ *Third Reminder Notice sent on 7/1/13*

- ❖ *Cut-Off Reporting Date is 7/10/13*
- ❖ *Family reports for recertification on 8/25/13*
- ❖ *Recertification complete and family notified on 9/20/13*
- ❖ *Changes in HAP and rent take effect on 9/1/13*
- ❖ *{60 day notice was provided in the Third Reminder Notice}*

Any changes in the assistance payment resulting from the recertification process must be made retroactive to the recertification anniversary date, regardless of whether the assistance payment increased or decreased. Owners will have to make adjustments to the HUD billings to make up for changes in assistance payments resulting from the past due recertification.

4350.3 REV-1
Paragraph 7-8D(3)
(pg. 7-18)

SCENARIO FIVE: RESIDENT RESPONDS AFTER RECERTIFICATION DATE

When a resident fails to report for their recertification interview by the anniversary date, s/he is in noncompliance and will be charged the 236 market rent, Section 8 Contract Rent, or 110% of BMIR rent on the recertification date. Once the family reports (after the recertification anniversary date) to the owner, the recertification is completed and all changes in the rent and HAP take effect the first of the month following the date the family reported for their recertification. The resident will continue to be charged market/contract rent until s/he reports to the owner. The failure to report, pay, or make arrangements to pay the market/contract rent is grounds for termination of tenancy.

If the resident occupies a unit in a 202 PRAC or 811 PRAC, the family will be evicted and will be charged with the greater of operating rent or 30% of incomes until the eviction procedures are completed.

- ❖ *Initial Notice given on 9/1/12; recertification date is 9/1/13*
- ❖ *First Reminder Notice sent out 5/1/13*
- ❖ *Second Reminder Notice sent on 6/1/13*
- ❖ *Third Reminder Notice sent on 7/1/13*

- ❖ *Cut-Off Reporting Date is 7/10/13*
- ❖ *Recertification Date is 9/1/13; family does not comply*
- ❖ *Household assistance is terminated effective 8/31/13*
- ❖ *Family is charged market rent on 9/1/13*
- ❖ *Family reports for recertification on 9/12/13*
- ❖ *Initial certification complete and family notified on 9/28/13*
- ❖ *Changes in HAP and rent take effect on 10/1/13*
- ❖ *Recertification date changes to 10/1 and the recertification is processed as an initial certification*

It is important to note that once the family reports to the owner, and the recertification process commences, the owner may not evict the family for failure to pay the market rent.

When a tenant fails to provide the required recertification information by the recertification anniversary date, an owner must ask whether extenuating circumstances prevented the tenant from responding prior to the anniversary date.

If the tenant is a person with disabilities, the owner must consider extenuating circumstances when this would be required as a matter of reasonable accommodation. If the owner determines that extenuating circumstances did exist, then the recertification is processed and all changes in rent and HAP take effect retroactively back to the anniversary date. Thus, there is no change in the recertification date.

ACCESSIBILITY IN RECERTIFICATION COMMUNICATIONS

Note: 504/Fair Housing -- Remember, that in accordance with the requirements of 504 and Fair Housing, all communications with tenants with disabilities pertaining to the recertification process must be made in ways which make the information fully accessible to them. Thus, a written notice sent to a visually impaired tenant does not satisfy the requirement that communications with handicapped persons be provided in accessible formats.

ANNUAL RECERTIFICATION MINI QUIZ

- | | | |
|-------|----|---|
| TRUE | 1. | The earliest a tenant who did not comply timely with the annual |
| FALSE | | recertification requirements could be charged Market Rent would be the |
| | | scheduled effective date of the recertification. |
| | | |
| TRUE | 2. | The cut off date is the 10 th day of the 12 th month of the recertification period. |
| FALSE | | |
| | | |
| TRUE | 3. | The EIV Income Report always replaces the need for third party |
| FALSE | | verifications. |
| | | |
| TRUE | 4. | It is not required to supply the notice of denial of extenuating circumstance to |
| FALSE | | tenants with disabilities in accessible formats. |

CHAPTER 22

INTERIM ADJUSTMENTS

Interim adjustments are discussed in the 4350.3 REV-1, Chapter 7, Section 2, Paragraphs 7-9 through 7-13. In addition, interim adjustments are addressed in Paragraph 16, Reporting Changes Between Regularly Scheduled Recertifications, of the Family Model Lease, Appendix 4. Sample notices pertaining to interim adjustments are presented in Exhibits 7-7, and 7-8.

I. INTRODUCTION

Interim adjustments are designed to address changes in a family's circumstances which occur between annual recertifications so that the family's rent can be recomputed on the basis of current information, more accurately reflecting the financial circumstances the family is now facing. Interim adjustments then have the effect of either raising or lowering the tenant's rent in almost all instances. It is not usually a problem getting tenants to report changes in their circumstances which would result in a lower rent--quite naturally, they are generally eager to report any such changes. Reporting changes, which would result in an increased rent for the tenant, can be more problematic on occasion. Let's examine the various instances in which interims may be processed, and determine tenants' obligation to report interim changes and owners' obligation to process interim adjustments.

4350.3 REV-1
Paragraph 7-10
(pg. 7-22)

A. WHEN TENANTS MUST REPORT INTERIM CHANGES

The Model Lease stipulates, in Paragraph 16, that tenants **must** report to the housing provider for interim adjustments immediately if any of the following changes occur between their annual recertifications.

1. Any member of the family moves out of the unit.
2. The family proposes to move a new member into the unit.

Note – per Change 4, owners must, at a minimum, apply screening criteria for criminal activity to added family members. This includes State Sex offender registration and use of the EIV Existing Tenant Search to such persons, who include live in aides. All added members must also disclose and verify their Social Security Numbers in compliance with the SSN rule discussed in Chapter 3 of the 4350.3.

3. An adult member of the family, certified as unemployed at the most recent certification/recertification, gets a job.
4. The family's cumulative income increases by \$200.00 or more per month. (Note that this is \$200.00 per month **for the entire household, not each household member.**)

4350.3 REV-1
Paragraph 7-11
(pg. 7-23)

B. OWNER'S RESPONSIBILITY TO PROCESS INTERIM RECERTIFICATIONS

An owner is obligated to process an interim adjustment whenever a tenant family reports that it has experienced any of the following changes:

1. A change in family composition;
2. An increase in family income of \$200 or more per month;
3. An increase in allowances;
4. *Most* decreases in income, except in circumstances detailed below; or
5. A change in citizenship or eligible immigration status of any family members.

When such changes are reported, the owner is required to verify only the information that has changed. The interim recertification must be processed within a reasonable time, defined in the 4350.3 REV-1 to generally be no more than 4 weeks.

If a tenant reports a change in income that does not increase the household's cumulative income by \$200 or more a month, the owner should not process an interim recertification to increase the tenant's rent.

If a tenant reports any other change addressed above along with an increase in income that does not increase the household's cumulative income by \$200 or more a month, the owner should not include the increase in income in processing the interim recertification.

Example 1: The tenant reports that a family member has gone to work part-time. The owner verifies the employment income and learns that the household's cumulative income will only increase by \$150 per month. The owner should not process an interim recertification.

Example 2: The tenant reports they have a new baby and also that a family member has gone to work part-time. The owner verifies the employment income and learns that the household's cumulative income will only increase by \$100 per month. The owner should process an interim recertification to include the new baby as a dependent but should not include the increase in income.

EXCEPTIONS

The 4350.3 REV-1 sets forth two instances in which an owner can refuse to process an interim adjustment pursuant to decrease(s) in income reported by the tenant. These two instances in which an owner may refuse to process an interim are:

1. The case in which *"the decrease [in income] was caused by a deliberate action of the tenant to avoid paying rent. (Example: The tenant quit a job in order to qualify for a lower rent and that can be documented in the record.)"* We are skeptical of the extent to which it can be **proven** that a tenant quit a job to qualify for a lower rent.

There are any number of reasons a person might quit a job, some of which he/she might be uncomfortable discussing, such as sexual harassment. We would caution any owner wishing to refuse to process a requested interim adjustment on these grounds to consult with an attorney first to see if the attorney thought that the documentation in support of the decision not to process an interim would hold up in court.

2. An instance in which *"The owner receives confirmation that the decrease will last less than one month."* Owners are given the discretion to process interims in any event in such cases, so long as the decision to process an interim is applied consistently to all tenants finding themselves in this situation, and not implemented selectively, either punitively or on the basis of favoritism.
3. The 4350.3 REV-1 outlines an additional circumstance in which owners may choose to delay processing of an interim adjustment, when confirmation has been received that the tenant's income will be partially or fully restored within two months.

If you decide to delay processing, the following apply:

- ❖ May require the tenant to pay the current amount of rent until the interim recertification is complete.
- ❖ Must not evict the tenant for nonpayment of rent.
- ❖ Must not charge the tenant a late fee for paying rent after the 5th of the month because the owner elected to delay processing, knowing the tenant has experienced a change in income.

Once you are able to verify the tenant's new income, you must do as follows:

- ❖ Recertify the tenant, as described in paragraph 7-12
- ❖ Retroactively apply any reduction in rent to the first day of the month after the date of the action that caused the decrease in income.
- ❖ Notify the tenant in writing of any rent due for the period of delay. If the tenant fails to pay this amount within 30 days of notification, the owner may pursue eviction for nonpayment of rent.

NOTE: All new leases must use the revised version of Section 16B regarding interim reporting requirements as contained in Appendix 4.

When processing an interim recertification due to a change in income, the EIV system must be used. It is recognized however, that the delay in reporting data to EIV by state agencies may create inaccurate data in the EIV Reports. In such cases, owners will need to use another method of verification, such as third party verification.

4350.3 REV-1
Paragraph 7-13
(pg. 7-27)

C. EFFECTIVE DATES OF INTERIM ADJUSTMENTS

For interims processed pursuant to unit transfers, all changes in information become effective on the day the family occupies the new unit.

Rent increases pursuant to interim adjustments become effective as follows:

1. Assuming the change in income occasioning the rent increase was reported on a timely basis, the recomputed rent does not become effective until a thirty day rent increase notice period has expired.
2. Rent decreases resulting from interim changes become effective the first day of the rent period after the action occasioning the decrease (once again assuming timely reporting on the tenant's part).

4350.3 REV-1
Paragraph
7-12B
(pg. 7-27)

D. TENANT FAILURE TO SUPPLY INTERIM REPORTS

Owners are required to notify tenants whom they have learned have experienced changes they were required to report, but have not reported, that they must report for an interim recertification. The notice, a sample of which is included in the 4350.3 REV-1 as Exhibit 7-7 - Interim Adjustment – Initial Notice, gives the tenant 10 days to respond to the request to establish contact so an interim can be processed. The notice goes on to state that if the tenant does not respond during the 10-day period, the family's rent may be increased to the HUD-approved Market Rent or 110% of BMIR rent as of the beginning of the next rent period. Additionally, owners will use

the EIV New Hires Report as detailed in their EIV Policy, to determine if any household member has new employment.

A timely response to the 10-day notice and supplying of the information requested sets the interim recertification process in motion. If the tenant **does not** report timely within the 10 day period, the 4350.3 REV-1 states that the owner charges the tenant the Market Rent, beginning with the next rent period. As soon as a tenant being charged Market Rent **does** respond, his/her rent must be returned to the previously assisted rent, pending completion of the processing of the interim adjustment. In a 202 or 811 PRAC, the owner may evict the resident for lease noncompliance.

4350.3 REV-1
Paragraph 7-13
(pg. 7-27)

E. EFFECTIVE DATES OF RENTS

1. Rent increases resulting from interim adjustments processed after tenants failed to report changes in circumstances required by the lease become effective retroactive to the first day of the rent period following the unreported change.
2. Rent decreases resulting from changes required to be reported, but which were not reported timely, become effective the first day of the rent period following completion of the processing of the interim adjustment.
3. Because there has been some confusion around the issue of effective dates of rents resulting from interim changes not reported in compliance with the lease, let's look at an example to help clarify the different scenarios you may encounter.

EXAMPLE: The manager of the Branford Plaza, a Section 8 elderly complex, heard two residents in the mail room talking about how Sally Dorsett's husband, Willie, had moved out and deserted her for another woman six months earlier, in May of 2006. The manager sent Sally a 10-day notice, informing her that she had to report for an interim adjustment or her rent would be increased to the Market Rent. Sally quickly got in touch, and when questioned, on November 24, verified that Willie had left her six months previously. When the manager said, *"Why didn't you*

tell me sooner, Sally? With Willie out of the unit, your rent is going to be lower because you've lost his income." Sally responded, "I was ashamed for you to know Willie had left me. I have savings so I could afford the rent."

When should Sally's recomputed rent become effective? December 1, 2006.

Why? Sally was required by the lease to report when any household member moved out of the unit. By not reporting timely, she lost the right to have her rent reduced effective the first of the month after Willie moved out, and instead could only have her rent reduced effective the first of the month after his move-out had been verified.

4350.3 REV-1
Paragraph 7-16
(pg. 7-28)

F. UNIT TRANSFERS

Interim adjustments may be done pursuant to unit transfers when a family experiences a change in its number of persons or composition that makes the unit in which it has been residing no longer appropriate either with regard to size or design features. As set forth in Paragraph 7-16, owners have some discretion in deciding whether or not to require families who have experienced changes in their composition or number to move to a different unit. While the decision to move a family should be made on a case-by-case basis, the decision should be informed by a consistent thought process that is applied to all cases alike. Remember, too, that the occupancy standards presented in Chapter 3 of the 4350.3 REV-1 might more accurately be described as occupancy "*guidelines*" in this day and age. Where an owner does decide to require a family to transfer in response to some change in the family's composition, the family has the right under the lease to reject the transfer and remain in the unit, provided they pay the HUD-approved Market Rent on the unit. The family's alternative is to move to a new unit within 30 days of the owner notifying them that a unit of appropriate size or type is available in the project.

4350.3 REV-1
Paragraph 7-17
(pg. 7-30)

G. IMPLEMENTATION OF GROSS RENT CHANGES

Basically, these are easy to process because they are not caused by a change in the tenant's circumstances that would require reverification, but are instead caused by a change in the unit's rent or utility allowance. Appendix 7-A outlines changes that

must be made to a family's 50059 Data Requirements in such instances. Owners must submit approved gross-rent changes to their contract administrator or to TRACS.

- 1) Owners must provide the tenant a new HUD-50059-A showing all changes in rents, utility allowances, TTP, tenant rent and HAP payments.
- 2) A copy of the HUD- 50059-A signed and dated by the owner must be placed in the tenant file.
- 3) Tenants need to sign the HUD- 50059-A **only** if a tenants rent changes or the amount of their utility reimbursement changes.

INTERIM ADJUSTMENTS MINI QUIZ

- TRUE 1. A resident must notify the owner if the family's cumulative income increases
FALSE by \$200 or more per month.
- TRUE 2. The earliest an interim reduction in rent can be effective is the first day of the
FALSE first rent period following the action that caused the decrease in rent, when
the resident has reported the change in a timely manner.
- TRUE 3. It is required to send tenants three ten-day notices for interim adjustments
FALSE before raising their rent to the Market Rent.
- TRUE 4. It is necessary to obtain consents for release of income information from any
FALSE household members who have turned 18 since the last time the family was
certified or recertified when you are already processing an interim.
- TRUE 5. Owners are required to force tenant households that are no longer in
FALSE compliance with a project's occupancy guidelines to transfer to a more
appropriate unit.

CHAPTER 23

TERMINATION OF ASSISTANCE

Removal of subsidy is presented in the 4350.3 REV-1, Chapter 8, Section 1, and Paragraphs 8-5 through 8-7. It is also dealt with in Paragraph 17 of the Family Model Lease, Appendix 4A.

I. INTRODUCTION

Termination of assistance is an action that an owner can take against tenants receiving Rent Sup, RAP, or Section 8 assistance. Residents whose subsidy is removed **are not** evicted. Rather, they are taken off of whichever of the project-based assistance programs they have been participating in, and required to pay Market Rent on their units. As long as they continue to pay the Market Rent they retain the right to reside in their units and all other rights associated with tenancy, as set forth in the lease and the 4350.3 REV-1.

A. GROUNDS FOR TERMINATION OF ASSISTANCE

4350.3 REV-1
Paragraph 8-5
(pg. 8-3)

The 4350.3 REV-1 lists six grounds for termination of assistance, in Chapter 8, Section 1. They are:

1. Failure to comply with recertification requirements, including discrepancies, errors and fraud;
2. Increased ability to pay the rent;
3. Refusal to transfer to a unit of appropriate size within 30 days after the owner notifies him/her that the unit of the required size is available;
4. Refusal to sign the required consent and verification forms;
5. The owner is unable to establish citizenship or eligible immigration status for any family members who have begun receiving assistance; and
6. A student enrolled at an institution of higher education who does not meet the eligibility requirements for assistance.

Let's consider what the Handbook offers in terms of terminating assistance due to the citizenship rule, which can be a complicated issue.

“The process for owners to verify and establish a tenant's eligible immigration status can be lengthy. Sometimes a tenant begins receiving assistance before the owner establishes citizenship or eligible immigration status; this happens when the owner encounters delays in verifying the information provided by the tenant. If the owner then determines that the tenant does not meet the requirement for citizenship or eligible immigration status, the assistance must be terminated.”

Additional information regarding the conditions for terminating assistance as a result of citizenship or eligible immigrations status can be found in Paragraph 8-7.

4350.3 REV-1
Paragraph 8-5
(pg. 8-3)

B. FAILURE TO RECERTIFY

Policy on this topic is presented in Paragraph 8-5. We have mentioned it before in connection with a failure to comply with annual and interim recertification requirements. In both instances, the subsidy of a non-responsive tenant can be removed **only if** management has complied with all notice requirements set forth earlier in the Handbook, with regard to both the timing and content of the annual recertification/interim adjustment notices.

4350.3 REV-1
Paragraph 8-5C
(pg. 8-4)

C. INCREASED ABILITY TO PAY

This ground for removal of subsidy is straightforward. It is not punishment. Rather, in this instance, a family's income has increased to the point that when their programmatic rent is computed, their Total Tenant Payment exceeds or equals the Gross Rent on their unit. An example may help illustrate this scenario.

EXAMPLE: Tim and Darlene Scott reside in a Section 8 complex with their two-year-old son, Timmy Junior. Tim recently completed VoTech training to become a bulldozer operator and has accepted a position with one of the biggest site developers in the area. Tim and Darlene are undergoing their annual recertification. Their Annual income has been verified at \$48,000,

and their adjusted income is \$47,520. Thus, their Section 8 rent computes out to a Total Tenant Payment of \$1,188. The Gross Rent on the Scott's unit is \$480. So you can see, the Scotts no longer qualify for Section 8 assistance.

In such an instance, the 4350.3 REV-1 requires that owners stop billing HUD on behalf of the tenant and re-execute a new HUD 50059 and calculate the appropriate rent for the family.

D. FAILURE TO MEET STUDENT ELIGIBILITY CRITERIA

Owners must determine a student's eligibility for Section 8 assistance at move-in, annual recertification, initial certification (when an in-place tenant begins receiving Section 8), and at the time of an interim recertification if one of the family composition changes reported is that a household member is enrolled as a student.

To determine student eligibility for other assistance programs, refer to Paragraph 3-13.B of the 4350.3

4350.3 REV-1
Paragraph 8-6
(pg. 8-5)

E. PROCEDURES FOR TERMINATING OR REINSTATING ASSISTANCE

When an owner decides to terminate assistance, compliance with the notification requirements is essential. Written notice should be sent to the resident, including the following items:

1. Date assistance will be terminated;
2. Reasons for terminating assistance;
3. Amount of rent the resident will be responsible to pay; and
4. Owner may terminate tenancy if the new rent is not paid.
5. The tenant has a right to request, within 10 calendar days from the date of the notice, a meeting with the owner to discuss the proposed termination of assistance.

The notice should be served in two ways: first class mail to the resident at the unit address; and delivering a copy to an adult person who lives in the unit. If no adult answers the door, the notice may be posted.

Whether assistance was terminated for failure to recertify or increased ability to pay,

the Handbook establishes that assistance should be reinstated if assistance is available on the unit, the tenant is eligible for assistance, and the tenant submits all information necessary to be certified on the assistance program.

Note that the decision to reinstate assistance is discretionary--there is no requirement that owners reinstate assistance even if all the pre-conditions are met. If a family's assistance was terminated, though, because of increased ability to pay and they experience a subsequent loss of income through no fault of their own, so that they are once again eligible for assistance, they will almost certainly not be able to afford the Market Rent they have been paying any more. Tenants whose subsidy has been removed for refusal to recertify might possibly have unreported sources of income.

TERMINATION OF ASSISTANCE MINI QUIZ

TRUE 1. The 4350.3 requires owners to terminate the tenancy of tenants who refuse to
FALSE transfer to a unit of appropriate size within 30 days of being notified to move.

TRUE 2. Termination of assistance does not apply to 202 PRAC and 811 PRAC
FALSE apartment communities.

CHAPTER 24

TERMINATION OF TENANCY AND FRAUD

Termination of tenancy and fraud is presented in the 4350.3 REV-1, Chapter 8, Sections 2 and 4, Paragraphs 8-11 through 8-25. Termination of tenancy is addressed in Paragraph 23, Termination of Tenancy, of the HUD Model Lease for Subsidized Program, Appendix 4 -A. Fraud is dealt with in Paragraphs 18, 23, and 25 of the HUD Model Lease for Subsidized Housing. Discrepancies reported in the EIV System are located in Paragraph 8-20, as well as Repayment Options, presented in Paragraph 8-23.

4350.3 REV-1
Paragraph 8-12
(pg. 8-10)

I. INTRODUCTION

The broad term "*termination of tenancy*" covers a tenant's moving out of a project for any reason--moving to another state, dying, abandoning the apartment as a household, and eviction. In instances in which the tenant initiates termination of tenancy and follows through in compliance with the requirements of the lease language, the procedure should be fairly straight-forward. It is in instances in which the landlord wishes to evict tenants who commit fraud, fail to provide the information required to establish their eligibility and/or appropriate rent, or engage in other lease violating behavior that the issue becomes more difficult. The Handbook reminds owners to treat all tenants in an equitable and consistent manner when terminating tenancy, and that they must comply with applicable federal, state and local requirements. Let's work our way through the various scenarios you may encounter pertaining to termination of tenancy.

A. GENERAL REQUIREMENTS

The following points stick out in particular:

4350.3 REV-1
Paragraph 8-12C
(pg. 8-11).

1. Owners of the HUD-assisted projects covered by the 4350.3 REV-1 may not evict "*by default*" by simply refusing to renew a lease that has expired. In other words, eviction is permitted only for cause.

4350.3 REV-1
Paragraph 8-13
(pg. 8-11),
8-15 (pg. 8-21)
and 8-16
(pg. 8-21)

2. Note that evictions may be carried out **only** for the following grounds:
 - a. Material non-compliance with the lease;
 - b. Failure to carry out obligations under any state landlord and tenant act;
 - c. Drug abuse and other criminal activity; and
 - d. "Other good cause"

3. Evictions for "*other good cause*" may be implemented only at the conclusion of a lease term, and in order to be prosecuted, the tenant being evicted must have been given prior notice that an action in which they were engaging would constitute a basis for eviction for "*other good cause*".

4350.3 REV-1
Paragraph 8-13
(pg. 8-11)

B. MATERIAL NON-COMPLIANCE

Rather than giving a definition of material non-compliance, the Handbook presents lists of actions or inactions that would constitute material non-compliance. Paragraph 8-12, Figure 8-2 lists a number of actions/inactions a tenant might take that would constitute material non-compliance. It should be pointed out that the list is by no means all-inclusive, so the fact that a particular action is not included in the list does not mean that it would not qualify as material non-compliance with the lease.

It also makes it clear that material non-compliance of the lease includes "repeated minor violations" that adversely affect the property, management or fellow tenants. Drug abuse and other criminal activity and fraud, are two examples of material non-compliance that are mentioned and that warrant further explanation. Material noncompliance includes failure to disclose and verify SSNs for all household members, in accordance with Chapter 3 of the 4350.3. Let's look at this requirement in more detail, as revised by Change 4.

Owners must terminate tenancy of the tenant and the tenant's household if disclosure and verification of SSNs has not been satisfied within specified timeframes. Specifically, this requirement extends to those households with a child under age six who does not have a SSN. The household has 90 days after admission to disclose and verify a SSN for that member, with an additional 90 day extension period, if applicable (see below).

Owners may choose to defer termination of tenancy, giving tenants an additional 90 days past their next annual recertification to disclose and verify SSNs for all non-exempt household members. Such deferrals may only be granted in situations where the tenant's failure to comply with the SSN requirements was beyond the tenant's control and there is a likelihood the tenant will be able to comply by the 90 day deadline. After the 90 day deferral period, if SSNs for all non-exempt household members have not been disclosed and verified, the owner shall terminate tenancy.

4350.3 REV-1
Paragraph 8-16
(pg. 8-23)

C. OTHER GOOD CAUSE

As with material non-compliance, other good cause is defined by example, rather than definition. One reason for this is that whether other good cause exists in a particular eviction case is decided on a case-by-case basis, depending on the merits of the case presented in landlord/tenant court. One example given as "*other good cause*" for evicting a tenant is that tenant's refusal to accept a lease modification. The Paragraph reiterates that the owner must have previously informed the tenant

that the tenant's actions would constitute other good cause, and serve as grounds for an eviction, before the owner can pursue an eviction on that basis. Likewise, evictions for other good cause must occur only at the expiration of a lease term.

4350.3 REV-1
Paragraph 8-14
(pg. 8-17)

D. DRUG ABUSE AND OTHER CRIMINAL ACTIVITY – ONE TYPE OF MATERIAL NON-COMPLIANCE

The basis for terminating tenancy for criminal activity, illegal drug use, alcohol abuse, and other circumstances is covered in the Section 23 of the HUD Model Lease, Appendix 4-A. Paragraph 8-14 reiterates the grounds for eviction contained in the model lease.

It is highly recommended that you read these provisions carefully and remember that eviction actions must be consistent with federal, state, and local civil rights laws, including the fair housing and equal opportunity laws described in Chapter One of this training manual. A few comments are warranted:

- The handbook and lease provides that an owner may evict a tenant if the Owner determines that the tenant has engaged in criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the criminal conviction standard of proof of the criminal activity. A housing provider will have difficulty enforcing this provision in many states.
- Owners may require a tenant to exclude a household member responsible for, or participated in, the lease violating behavior in order to continue to reside in the unit.
- Owners are allowed to terminate tenancy if a household member's abuse or pattern of abuse of alcohol threatens other residents' health, safety, or right to peaceful enjoyment. The focus here must be on the tenant's negative tenancy related behavior, not on the fact that he drinks or has a history of drinking.
- The handbook provides that owners **may** consider all of the circumstances relevant to a particular eviction case. The handbook states that in relation to terminating tenancy for illegal use of drugs or alcohol abuse (that threatens other residents' health, safety, or right to peaceful enjoyment), an owner **may** consider and **may** require evidence of whether the tenant is either participating in or successfully completed a supervised drug or alcohol rehabilitation program or otherwise been rehabbed. As discussed in Chapter

6 of this training manual, “Tenant Selection and Screening”, consideration of extenuating circumstances is a form of reasonable accommodation, and tenants with alcoholism and a **history** of illegal drug use are considered persons with disabilities under federal laws that require owners to provide a reasonable accommodation unless it poses a fundamental alteration in the nature of the housing program or an undue financial and administrative burden. As such, if you don’t consider extenuating circumstances, if requested by such tenants, as a form of a reasonable accommodation you may be in violation of federal anti-discrimination law. We recommend in such instances you consult an attorney knowledgeable in both housing and fair housing law.

4350.3 REV-1
Paragraph 8-14B
(pg. 8-18)

The handbook provides that an owner may obtain a tenant’s criminal conviction records and/or State lifetime sex offender registration records by submitting a request to a PHA in the area where the property is located, who in turn will request it from the appropriate local enforcement agency. The request must include a consent form, signed by the household member, and in the case of eviction, the owner’s standards for evicting drug criminals who engage in the abuse of alcohol or drug-related activities. Some important points are as follows:

1. An owner may submit a request to a PHA (in the area where the property is located) to obtain the criminal records of a member of a household for use in applicant screening, lease enforcement or eviction. Refer to Glossary for definition of Public Housing Agency (PHA).
2. Prior to performing or requesting a PHA to conduct a background check, an owner must do the following:
 - (a) *Obtain a signed consent form from the household member or applicant;*
 - (b) *Provide the PHA with its selection criteria; and*
 - (c) *Ensure that all criminal background checks are conducted consistently for every applicant or resident.*
3. Criminal records obtained by the owner are to be maintained confidentially, not misused or improperly disseminated, and destroyed three years after tenancy is terminated. Criminal records received for applicants who never move in are to be retained with the application for three years.
4. Entities must handle any information from other records in accordance with applicable state and federal privacy laws and with the provisions of the consent forms signed by the applicant.

5. Penalties for improper release of information: Conviction for a misdemeanor and imposition of a fine of not more than \$5,000 is the potential penalty for any owner who knowingly and willfully requests or obtains, under false pretenses, any information concerning a tenant under the authority of this rule or who discloses any such information in any manner to any individual not entitled under any law to receive the information.

4350.3 REV-1
Paragraph 8-19
(pg. 8-26)

E. DISCREPANCIES, ERRORS, AND FRAUD

Change 4 to the 4350.3 made significant modifications in the treatment of tenant error, fraud and discrepancies. We shall review these handbook changes, as well as cover the key elements of tenant errors, repayment agreements, and repayment options.

Owners must use the EIV system to identify possible:

- Discrepancies in income;
- Deceased tenants;
- Receipt of multiple subsidy; and,
- Occupancy at more than one address.

In cases of possible program violations, owners are required to investigate and document their findings. This includes meeting with the resident and obtaining any additional information. It is important to note that owners may not suspend, terminate, reduce or make a final denial of any benefits until they have taken the necessary steps to verify information. The owner must notify the tenant in writing of the results of the error, providing the resident ten days to meet with management. The 10-day notice must additionally state that if the tenant does not respond within 10 days, the tenant's tenancy may be terminated. If a meeting is held, the owner has ten days to issue a final written decision. One of the key decisions the owner must make is if the error was unintentional, in which case a repayment agreement (as applicable) will be entered into. If management determines the error was intentional, it then is considered fraud.

The answer to the question of the tenant's intent is crucial, because on that answer hinges the way in which the situation will be handled. If the owner becomes convinced that the incorrect information resulted from an honest mistake, such as forgetfulness or a misunderstanding of program requirements, you have a program violation, but no fraud.

Why? Because in order for there to be fraud there must be an intent on the part of the tenant to deceive the owner.

1. EVICTION AND OTHER ACTION REQUIRED

Where fraud has been established in accordance with the 4350.3 REV-1's documentation requirements, HUD's prescribed course of action is eviction. Commission of fraud, constitutes "*material non-compliance with the lease*", which is one of the grounds for evicting a tenant. The Handbook, in Paragraph 8-19-D.3, goes on to state that when a tenant is evicted for material noncompliance for committing fraud, owners are required to initiate a civil suit for restoration of assistance moneys wrongfully paid out on the basis of the fraudulent information. Referring the case for criminal prosecution is a possibility, too.

The decisions of a court of law cannot be anticipated, particularly with regard to intent to defraud, but some cases are definitely stronger than others. Fraud is not an error that could result from misunderstanding or forgetfulness--anyone working a full-time job knows that the answer to the question, "*Do you have a job?*" is "*Yes.*"

F. DISCREPANCIES IN THE EIV SYSTEM

4350.3 REV-1
Paragraph 8-20
(pg. 8-28)

In accordance with HUD regulations and a company's EIV Policy, owners must use the EIV system at recertification to identify, review, and resolve any discrepancies that could impact rent or subsidy. Use of the EIV system includes the:

- Income Discrepancy Report – this report will identify any income discrepancies of \$2400 or more, causing management to investigate such discrepancies. Owners will run the Discrepancy Report at the same time as the Income Report as part of the annual recertification process.
- EIV Verification Reports – owners must review and resolve any discrepancies produced by the Deceased Tenant Report and/or Multiple Subsidy Report. These reports are be run by management at least quarterly.

It is important to keep in mind that not all EIV discrepancies are valid and as such, no change in benefits may be taken until discrepancies have been completely reviewed. In the case of an income discrepancy, the owner must verify:

- The amount of income involved;
- Whether the tenant had or has access to that income for his or her use; and,
- The period of income.

G. TENANT'S OBLIGATION TO REPAY

Tenants are required under Paragraph 18 of the HUD Model Lease to repay assistance moneys that were wrongfully paid on their behalf, whether or not the incorrect information resulting in the moneys was supplied through intent or by mistake. Tenants have no obligation to repay HUD for assistance moneys wrongfully paid as a result of an owner's mistakes. Tenants must reimburse the owner for overpayment back to the time the overpayment began, not to exceed the five year limitation presented in the forms HUD-9887 and 9887-A. The five year limitation applies for all overpayments of assistance, not just those identified through use of EIV. Further, the owner must have the 50059(s) on file that was in effect during the overpayment period, as well as supporting documentation. Without the 59s and supporting documents, the owner cannot seek reimbursement from the tenant.

H. TENANT REPAYMENT OPTIONS AND AGREEMENTS

Tenants have the option to reimburse the owner through a lump sum payment, making repayments in accordance with a signed repayment agreement, or a combination of both. Default on repayments constitutes non-compliance with the lease and tenants may have tenancy terminated.

If the tenant chooses to enter into a repayment agreement, it is important that both parties must agree to the terms. The monthly payment must be affordable to the tenant and when added to the family's TTP, should not exceed 40% of the family's monthly adjusted income.

Example: The family's monthly adjusted income is \$1230. The family's TTP is \$369. 40% of their monthly adjusted income is \$492. The monthly payments for the repayment agreement should not exceed \$123 (\$492 minus \$369).

Repayment agreements must include six elements as indicated in the 4350.3, including signed and dated by both parties as well as a clause indicating the terms can be renegotiated when there is a change in family income of \$200 or more per month.

I. OWNER'S OBLIGATION TO REPAY

Owners are required to repay HUD moneys wrongfully paid out due to tenants supplying incorrect information **only** as such moneys are recovered from the tenants in question. The owner makes an adjustment on the monthly HAP voucher to reflect the amount of the tenant's reimbursement usually based on a re-payment agreement. The owner may keep a portion of the collected repayments, to the lesser of:

- The owner's actual costs (which must be documented); or
- 20% of the amount received from the tenant.

Owners must reimburse HUD any assistance moneys wrongfully paid by HUD due to errors on the owner's part. HUD may require payment of such moneys in a lump sum or permit payment over time where lump sum payment would jeopardize the financial status of the project.

4350.3 REV-1
Paragraph 8-24
(pg. 8-34)

Reimbursement to Tenant:

If the EIV Discrepancy Report shows a decrease of \$2400 or more in income, the owner must investigate and determine if the error was a result of management or third party verifications. In such cases where the tenant has over paid as a result of management or third party error, management must complete corrections to prior certifications and must provide the tenant with written notification, which includes:

1. A notice of the change in rent, effective retroactively to when the error occurred;
2. The new monthly rent the tenant is required to pay;
3. The amount of the overpayment of rent due to the tenant;
4. A form for the tenant to sign and return to the owner stating whether the tenant wants to receive a full, immediate refund, or apply the overpayment to future monthly rent payments.

4350.3 REV-1
Paragraph 8-13B
(pg. 8-15)

J. THE TERMINATION NOTICE

All evictions require written notice in advance. Remember that such a notice must be provided in an accessible format for tenants with disabilities who are unable to process information communicated on a written notice, and that these are minimum standards required by HUD. Most state and/or local laws are more restrictive.

1. The Handbook stipulates that eviction notices for "*other good cause*" be received by the tenant at least 30 days prior to the date when the tenant will be required to vacate the unit. The Handbook does not stipulate a particular notice period for evictions sought on the basis of material non-compliance with the lease or failure to carry out obligations under any state landlord/tenant act, stating only that the notice period for any evictions pursued on that basis may have a notice period that runs concurrent with that stipulated in state law.
2. Required contents of the termination notice are outlined in Paragraph 8-13 and include, but isn't limited to the following:
 - a. Date lease will be terminated;

- b. Grounds for termination with enough detail for tenant to prepare a defense;
 - c. Inform tenant if he/she stays in the unit on/after the date of eviction, the owner has a right to bring a court action, at which the tenant may present a defense;
 - d. He/she has 10 days to discuss the proposed termination of tenancy with the owner
 - e. Advise that persons with disabilities have the right to request reasonable accommodations to participate in the hearing process
 - f. If the tenant is being evicted for failing to pay rent, the amount of rent owed and the date of such computation.
- 3. The Handbook does not provide a sample eviction notice.
 - 4. The fact that a tenant chooses not to discuss the pending eviction with the owner before the case goes to court may not be construed as a waiver of the tenant's right to due process in a court of law.

4350.3 REV-1
Paragraph
8-13B
(pg. 8-16)

K. MANNER OF SERVICE OF THE EVICTION NOTICE

Some of the assisted housing programs have very specific procedural requirements pertaining to the manner of service which must be satisfied if an eviction is to be successfully prosecuted (Section 236, 221(d)(3), BMIR, Rent Supplement, Section 202's, Section 811, and Section 8 Loan Management Set-Aside and Property Disposition). For other programs, the manner of service need only be in compliance with requirements of state and local law (all other Section 8 programs).

IMPORTANT NOTE: Many evictions are thrown out in court because the housing owner failed to satisfy procedural requirements pertaining to the contents of the termination notice, the notice period before an eviction can be taken to court and the manner of service of the termination notice. Owners must take the time to acquaint themselves with the various pertinent procedural requirements in effect in the state(s) where their complex(es) are located, so that they can avoid having evictions thrown out of court on technicalities.

L. ADDITIONAL EVICTION REQUIREMENTS

The requirements are pretty much what you would expect:

1. Evictions may not be achieved except by court actions. Not telling the tenant, *"You have to move."* or removing the door to the unit.
2. Evictions may be pursued only on the grounds cited in the eviction notice.
3. Any rights pursuant to eviction which are accorded to the tenant by state law, above and beyond those accorded by the 4350.3 REV-1 and HUD Model Lease language may be extended to the tenant except where superseded by federal law.

TERMINATION OF TENANCY AND FRAUD MINI QUIZ

- | | | |
|-------|----|---|
| TRUE | 1. | All successfully prosecuted evictions are terminations of tenancy, but not all terminations of tenancy are evictions. |
| FALSE | | |
| | | |
| TRUE | 2. | Sam is a four year old member of the Hawkins household, living in a Section 8 development. Sam does not have a SSN on file. The family has 90 days after admission to disclose and provide verification of Sam's Social Security Number, with an optional 90-day extension. |
| FALSE | | |
| | | |
| TRUE | 3. | The Deceased Tenant Report must be run at least monthly by the owner. |
| FALSE | | |
| | | |
| TRUE | 4. | The 4350.3 REV-1 does not stipulate a notice period for eviction for non-payment of rent. |
| FALSE | | |

MINI QUIZ ANSWER KEYS

CHAPTER 1

CIVIL RIGHTS AND NONDISCRIMINATION 504 AND FAIR HOUSING NON-DISCRIMINATION AGAINST HANDICAPPED/DISABLED PERSONS MINI QUIZ 504 AND FAIR HOUSING NON-DISCRIMINATION AGAINST HANDICAPPED/DISABLED PERSONS MINI QUIZ 504 AND FAIR HOUSING NON-DISCRIMINATION AGAINST HANDICAPPED/DISABLED PERSONS MINI QUIZ

- FALSE** 1. If an owner determines that a 504 compliance action under consideration would result in undue financial and administrative burdens, the owner may choose to do nothing at all.

FALSE. Although an owner does not have to take any action that would result in an undue financial and administrative burden s/he is required to take any action up to that point.

- TRUE** 2. If a 504 unit modification needed to achieve full accessibility for a handicapped resident's unit is affordable to the project, the owner may not require the tenant to pay for the modification, even if the tenant could afford to do so.

TRUE. If a project receives federal money, an owner may not require a tenant to pay for the cost of an accommodation if it will not result in an undue financial and administrative burden. If the project was only covered by the FHAA, the owner would not have an obligation to pay for the accommodation.

- FALSE** 3. If a tenant requiring accessible unit features refuses to transfer to a vacant unit containing those features, the owner must modify the tenant's current unit to provide those features.

FALSE. The law does not require an owner to modify an existing unit for a tenant with a disability if transferring the tenant to another unit will enable the tenant to have an equal opportunity to enjoy his/her housing.

- FALSE** 4. A rule can't be discriminatory if it doesn't overtly discriminate against a protected class.

FALSE. Remember, a rule can be discriminatory if it is neutral on its face, but has a discriminatory impact on people in a protected class.

Chapter 2 - ELIGIBILITY CRITERIA MINI QUIZ

- FALSE** 1. It would satisfy the Social Security number/certification requirement for the head of an applicant household to sign a certification on behalf of a **19 year-**old family member, stating that he/she had not had a Social Security number assigned.

False –All household members must have a verified Social Security Number unless they were 62 or older on January 31, 2013 and receiving assistance or are not claiming eligible status under the non-citizen rule.

- FALSE** 2. The requirement for family members age 18 and older to sign consents for release of income information is a one-time requirement.

False – It is necessary to obtain consents for release of income information from all family members, 18 and older, every time a family certified or recertified, in order for the family to continue to qualify for housing assistance.

- TRUE** 3. A mixed applicant family is eligible to receive only prorated assistance.

True – Mixed applicant families, which include both eligible and ineligible family members, may only receive prorated assistance at time of admission.

- FALSE** 4. It is not permitted to limit participation in any HUD housing program on the basis of age.

False – Some HUD housing programs are limited to families with specific characteristics, such as elderly families.

- TRUE** 5. An applicant family whose annual income exceeded the income limit in effect for the housing program to which they were applying would be ineligible for housing assistance under that program.

True - For a family to qualify for housing, its annual income may not exceed the limited prescribed for the housing program.

Chapter 3 - INCOME ELIGIBILITY MINI QUIZ

Dan Riordan is a single applicant to the Wilby Apartments, a Section 8 complex with a HAP contract effective date of 3/1/80 (pre-universe) Section 8 low-income. Dan's annual income exceeds the one-person, Section 8, very low-income limit for the area, but is less than the Section 8 low-income limit.

- TRUE** 1. Dan Riordan is income eligible for admission to the Wilby Apartments.

True – Dan has applied to live in a “pre-universe” unit (HAP Contract effective before 10/1/81). There is no limit on admitting applicants who are not very low income to pre universe projects; only to post universe projects.

- 95% and 50%** 2. An applicant who was income eligible for a BMIR unit but who was not income eligible for a Section 8 post universe unit would have an annual income that fell between % and % of the median income for the area.

Section 8 Post Universe units may only assist applicants who are very low income. For Section 8 Post-Universe units, the very low income limit is set at 50% of the

median income for an area. For BMIR units, the income limits is set at 95% of median income an area.

The Giordano family consists of head, Vinnie; spouse, Lucy; and **foster** children Randy, Luke, and Barry.

- TRUE** 3. You should use a five-person income limit to determine the Giordano's income eligibility.

True – You should use a 5-person income limit, because foster children are included for determining household size based on Change 4 to the Hadbook.

Chapter 4 - ELIGIBLE FAMILY COMPOSITION MINI QUIZ

- FALSE** 1. In order to qualify for the 202 PRAC program, an applicant must be developmentally disabled.

False – *To qualify for the 202 PRAC program, an applicant must be an elderly person.*

- FALSE** 2. Laura Bevins has applied to the Willow Court, a Section 8 complex, with her baby daughter, Ann, age one year.

Because Laura has never married, she qualifies as a single person under HUD's definitions.

False – *The definition of single person makes no reference to whether or not a person is married. It pertains to an applicant's intention to live alone.*

- FALSE** 3. Owners must use the Disability Status in EIV to determine eligibility of applicants as disabled.

False – *The Disability Status in EIV may be inaccurate and cannot be relied on.*

- TRUE** 4. Admission of single persons to the Section 8 program is not prohibited.

True – *HUD doesn't limit the admission of single persons to any of its programs.*

Chapter 5 - OCCUPANCY STANDARDS MINI QUIZ

Marie Gomez, a single applicant who is a wheelchair user, has indicated on her Unit Needs Questionnaire that she needs a 2-bedroom unit to house essential medical equipment, and that a 1-bedroom unit will not be of sufficient size.

- FALSE** 1. Because Ms. Gomez is an applicant with a disability, the owner must accept her request for a 2-bedroom unit at face value regardless of whether the need for an additional bedroom to house her medical equipment is obvious, and assign her the 2-bedroom unit she has requested.

False. *Owners may ask Ms. Gomez to verify that she needs a two-bedroom unit as a result of her disability if the need isn't obvious.*

- TRUE** 2. There is nothing in HUD's programmatic requirements or Handbook language that stipulates that a live-in attendant must be assigned his/her own bedroom.

True. *The handbook provides that owners must count live-in attendants in determining how many bedrooms a family may have. However, the Handbook doesn't specifically state that attendants must have their own bedrooms.*

Dolly Brunson, age 71, has applied for a unit at a 202 elderly complex in which she hopes to reside with her granddaughter Lila, age nine. The manager advised Dolly that there were no other children residing in the high rise, nor any play area or playground equipment on the grounds.

- TRUE** 3. The manager's information to Dolly about other children in the complex and the lack of play facilities might, in themselves, be considered discrimination on the basis of familial status.

True. *Owners may not steer applicants away from a particular type of housing. Such "steering" may be considered discriminatory.*

Chapter 6 - TENANT SELECTION AND SCREENING MINI QUIZ

- TRUE** 1. An owner must deny admission to an applicant who is subject to a lifetime State sex offender registration requirement.

True – HUD regulations require that owners prohibit admission of applicants who are subject to a lifetime State sex offender registration requirement.

The Morissey Arms is located on a steep hill. At the application interview of Betty Bruno, age 58, the manager noted that Mrs. Bruno used a walker to get around. He asked her how long she had used it and whether she would be able to walk without it in the future. Mrs. Bruno informed the manager that she has had to use the walker ever since an auto accident 17 years ago, and that she assumed she would always need it. The manager rejected Mrs. Bruno's application for fear that she might take a fall on the steep project site and sue the owner.

2. Assess the manager's performance here. Would you have taken the same actions? If not, why not?

The manager's actions were inappropriate. He should not have asked her any question regarding her disability, as they were not necessary to establish eligibility. The manager also had no reason for rejecting the applicant. It is not the manager's decision whether Mrs. Bruno is capable of living in the unit. Moreover, an owner cannot refuse to rent to someone with a disability for fear that s/he will hurt themselves and sue the owner.

- TRUE** 3. An applicant to a BMIR property may be required to meet the minimum income requirement established in the selection and screening procedures.

True – BMIR properties, which have a minimum rent requirement of the BMIR Rent, and a maximum rent requirement of 110% of BMIR rent, may create a minimum income requirement that applicants must satisfy.

- FALSE** 4. An applicant with no rental history must always be rejected.

False – An owner may not reject an applicant based solely on lack of rental history; rather the owner must pursue all screening and then reach a determination.

Chapter 7 - APPLICATION AND ADMISSION PREFERENCES MINI QUIZ

- FALSE** 1. Only applicants with disabilities need to be informed that the owner does not discriminate on the basis of handicap in the management of the project.

False – To do so would be a discriminatory practice; all applicants must be informed of the property's policy on nondiscrimination.

- TRUE** 2. It is not permitted to ask on the application to a Section 8 New Construction family complex, for the purpose of determining program eligibility, if the head or spouse has a disability.

True – An applicant with a disability has no bearing on a determination of eligibility in the Section 8 New Construction program.

Applicant Miranda Stone had already spent an hour and a half filling out the application to Kennedy Plaza and it was the close of the workday. The manager told Miranda she would have to submit the application “*as is.*” When Miranda complained she had not been able to complete the application because she didn’t understand some parts of it, the manager told her, “*Look you have to be able to complete the application to live here, and I am not permitted to help you.*”

- FALSE** 3. The manager was correct in her assessment that applicants must be able to complete the application without assistance.

False – The manager is required to provide a “reasonable accommodation” in assisting applicants in completing paperwork, including application forms.

- FALSE** 4. The form HUD-92006 should only be made available to applicant Households at the time of application.

False –Residents should be given an opportunity to update this form at Recert.

Chapter 8 - INCOME TARGETING MINI QUIZ

FALSE 1. An 811 property must comply with HUD's income targeting requirements.

False – *811 PRAC properties are exempt from the income targeting requirements.*

FALSE 2. Owners are not permitted to “skip” higher income applicants in order to select an extremely low-income applicant.

False – *Owners may “skip” over higher income applicants to offer a unit to an extremely low-income applicant in order to meet the income targeting goals for the property.*

Chapter 9 - REJECTING APPLICANTS MINI QUIZ

TRUE 1. Management has five business days after an appeal to issue a final written decision to the applicant.

True. *Management has five **business days** after an appeal to issue a final written decision to the applicant.*

FALSE 2. It is permissible to perform rejection of applicants over the phone.

False. *An owner must inform an applicant in writing that he/she is being rejected.*

TRUE 3. In a 236 complex with 75% of the units assisted with Loan Management Section 8 Set-Asides, it is possible that an applicant might be income eligible for one of the unassisted 236 units, but ineligible for Section 8 assistance.

True. *A person could be low-income and satisfy the income eligibility for a 236 unit, but not be very low-income and satisfy the income eligibility for a post universe Section 8 unit.*

Chapter 10 - WAITING LIST MANAGEMENT MINI QUIZ

- TRUE** 1. Owners must provide written public notice of their intention to close a property's waiting list.

True – *Owners are now required to issue public notice of intent to close a wait list.*

- TRUE** 2. Any applicant who was mistakenly removed by management from the waiting list must have the application reinstated regardless of whether the applicant requests such reinstatement.

True – *The applicant will not be penalized for the mistake of the owner in removing the applicant's name off the list.*

Chapter 11 - SELECTING TENANTS FROM THE WAITING LIST MINI QUIZ

- TRUE** 1. An applicant who fails to submit evidence of citizenship by the date specified by the owner must be denied assistance.

True – Applicants who have not submitted evidence of citizenship by the deadline date specified by the owner must be denied assistance; if they have submitted evidence and the owner is awaiting verification; the applicant cannot be denied assistance.

- TRUE** 2. Owners may require that copies of an income tax return be provided by the applicant at the application interview.

True – Ex. 4-1 includes tax returns as documents that owners may ask applicants to provide, as applicable.

- 7** 3. The HUD Fact Sheet is found in Appendix _____.

- FALSE** 4. Owners must use only local Public Housing Authorities to conduct screening for drug-related and other criminal activity.

False – Using PHAs is only one way in which owners may conduct screening activities; they may also use private credit and criminal reporting companies.

**CHAPTER 12 - CALCULATION OF TOTAL
TENANT PAYMENT AND TENANT RENT
MINI QUIZ**

1. The Russo family lives in a Section 8 complex. Their annual income is \$14,500 and their adjusted income is \$13,050. They are not welfare recipients. Compute the Russo's Total Tenant Payment.

ANSWER: \$326

2. Francis Goldman is an elderly Rent Sup tenant. Her adjusted income is \$8,100. The Gross rent on her unit is \$410. The HCDA percentage being used to calculate her rent is 30%. Compute Ms. Goldman's Total Tenant Payment.

ANSWER: \$203

3. The Wilkersons live in a Section 236 complex, which has project-paid utilities. Their adjusted income is \$19,730. The Basic Rent on their unit is \$415 and the Market Rent is \$520. The HCDA percentage being used to calculate their rent is 30%. Compute the Wilkerson's Tenant Rent.

ANSWER: \$493

4. The Allen family lives in a Section 236 complex with tenant-paid utilities. Their adjusted income is \$12,100. The Basic rent on their unit is \$330, the Market Rent is \$415, and the Utility Allowance is \$50. The HCDA percentage being used to compute their rent is 30%. Compute their Tenant rent.

ANSWER: \$330

CHAPTER 13
ENTERPRISE INCOME VERIFICATION
MINI QUIZ

- TRUE 1. The only place information relating to the Enterprise Income
FALSE Verification System is located in the 4350.3 Rev-1, Chapter 9.

False - Information on EIV is in numerous chapters of the Handbook.

- TRUE 2. Owner must use EIV Verification Reports.
FALSE *True - EIV Verification Reports (Existing Tenant Search, Multiple Subsidy Report, Identity Verification Reports, and Deceased Tenants Report).*

- TRUE 3. A resident service coordinator may view a resident's EIV
FALSE information at all times provided the resident has signed a release form.

False - Although a resident may sign a release for a resident service coordinator (RSC) to view the EIV data for the purpose of assisting the resident during the recertification process, the RSC must be present during the interview. An RSC isn't otherwise permitted access to a tenant's EIV data; even if the Tenant has signed a general release authorizing the Service Coordinator to have access to their file.

Chapter 14 - ASSETS AND ASSET INCOME MINI QUIZ

- TRUE** 1. If the total amount of all assets given away by a resident in the last two years is less than \$1000, the amount would not be included as a divestiture of assets.

True – The total of all amounts given away by a family in the last 2 years must be less than \$1000 in order to be exempt from the divestiture regulation, unless it a result of foreclosure, bankruptcy, divorce or separation.

Marcia Decker recently took her three small children and fled \$300,000 home, to escape from her abusive husband. She is unemployed and she and the children are currently receiving Welfare. She has no contact with her husband and he does not know where she is.

- TRUE** 2. Marcia would not be required to include her share of the house among her net family assets if she were to apply for assisted housing.
3. You are performing Marie Parkins' 8/1/13 annual recertification. She has \$491.00 in her checking account, and \$4,366 in her savings account, which currently earns 2.5% interest. The HUD Field Office computes income from assets at a rate of .02 (2%). Compute Marie's Net Family Assets and Asset Income on the excerpted portion of the sample 59 Data Requirements form provided.

Asset Type	C/I	Cash Value	Interest Income
checking	C	\$ 491	\$ 0
savings	C	\$ 4366	\$ 109
		\$	\$
Total Cash Value		\$ 4857	\$ 109
Total Interest			
If total cash value exceeds \$5,000, multiply the total amount by 2% to determine imputed income.			
Passbook Rate		2%	
Imputed Income		\$ 0 (NA because the cash value doesn't exceed \$5,000)	
TOTAL ASSET INCOME		\$ 109	(Greater of Imputed or Interest Income)

Chapter 15 - ANNUAL INCOME MINI QUIZ

- 5-1** 1. The list of annual income inclusions and exclusions is found in Exhibit _____.

Terry and Donna Poquette are a young married couple residing in a Section 8 complex. Terry works at a fast food restaurant and Donna also works there part-time while attending the local hairdressing academy as a full-time student.

- TRUE** 2. Both Terry and Donna's employment incomes must be included in the family's annual income.

True – *Although Donna is a full time student, she is the spouse of the household and therefore the full earnings of both head and spouse are to be included.*

- TRUE** 3. A family whose sole source of income is payments for the care of foster children will show zero annual income.

True – *Foster child payments are excluded from Annual Income.*

4. Alonzo Dawkins, age 74, resides in a Section 8 elderly complex. He has \$3,100 in a savings account earning 2.50% interest and \$297.00 in a checking account, which earns no interest. Mr. Dawkins receives a Social Security benefit check with a net amount of \$498.00 per month. A deduction of \$104 has been deducted to pay for his Medicare premium. In addition, Mr. Dawkins receives a pension of \$235.00 per month, from the newspaper he worked at as a custodian for 40 years. Using the following forms, compute Mr. Dawkins' annual income. For the purpose of this and other exercises, round **DOWN** at \$.49 and **UP** at \$.50

RENT COMPUTATION WORKSHEET

ASSETS

Asset Type	C/I	Cash Value	Interest Income
Checking		\$ 297	\$ 0
Savings		\$ 3100	\$ 78
		\$	\$
Total Cash Value		\$ 3,397	\$ 78
Total Interest			
If total cash value exceeds \$5,000, multiply the total amount by 2% to determine imputed income.			
Passbook Rate		2%	
Imputed Income		\$	
TOTAL ASSET INCOME		\$78	(Greater of Imputed or Interest Income)

INCOME

Family Mbr.	Income Source	Income Amount	Care Code (C, H, CH)
01	SS	\$ 7224	
01	PE	\$ 2820	
		\$	
		\$	
TOTAL INCOME		\$ 10,044	

ANNUAL INCOME	\$ 10,122
(Asset Income plus Total Income)	

Chapter 16 - ALLOWANCES AND ADJUSTED INCOME

MINI QUIZ

- FALSE** 1. Section 504 does not permit owners of assisted housing to require families wishing to claim handicapped assistance expenses to verify that the family member for whom the expenses are being incurred has a disability or handicap.

False – If a person is claiming the disability assistance expense, an owner has a right to require verification of a disability. The owner cannot inquire about the extent or nature of the disability.

2. Rowena Dawson lives in the Braxton Apartments with her 19-year-old daughter, Janice, and three foster children, Vanessa, 16, Sharonda, 13, and Tyree, 9. The number of dependents in the Dawson household is ____.

*Dependents are classified as other than head, co-head, spouse, **foster children**, or live in aides who are 18 years or younger; or 18 and older and disabled or a full time student.*

- TRUE** 3. An elderly household who paid for out of pocket expenses for open heart surgery may choose to wait until their next annual recertification to report the expense and have it included as part of their total medical medical expenses.

TRUE. *Families now have the option to report one time, unanticipated medical costs at either an interim recertification or at their next annual recertification.*

4. The Watson family is undergoing their annual recertification. The family consists of head Bonita, age 32, and her four children, Dexter, 13, Lewis, 11, Terry, 9, and Alice, 5. Bonita works full-time at the Post office for \$9.75/hour. During the school year (37 weeks per year) Bonita pays a neighbor \$4.00/hour to look after her children for two hours/day on schooldays, in between the time they get home from school and she gets home from work. In the summer months, Bonita drops off the kids with her parents, who care for them free of charge, and picks them up after work each day. The Watsons have \$413.00 in a savings account, earning 2.25% interest, and \$178.00 in a non-interest-bearing checking account. Compute the Watson's annual income and adjusted income.

ASSETS

Asset Type	C/I	Cash Value	Interest Income
Checking	C	\$178	\$ 0
Savings	C	\$ 413	\$ 9
		\$	\$
Total Cash Value		\$ 591	\$ Total Interest \$9
If total cash value exceeds \$5,000, multiply the total amount by 2% to determine imputed income.			
Passbook Rate		2%	
Imputed Income		\$ 0	
TOTAL ASSET INCOME		\$9	(Greater of Imputed or Interest Income)

INCOME

Family Mbr.	Income Source	Income Amount	Care Code (C, H, CH)
01	Employment	\$20,280	C
		\$	
		\$	
		\$	
TOTAL INCOME		\$20,280	

ANNUAL INCOME	\$20,289
(Asset Income plus Total Income)	

DEDUCTIONS

Dependent Deduction	\$1,920
Child Care for Work	\$1,110
Other Child Care	\$ 0
Total Handicapped Expenses	\$ 0
3% of Annual Income	\$609
Handicapped Deduction	\$0
Total Medical Expenses	\$0
Remaining 3% of Annual Income	\$0
Medical Deduction	\$0
Elderly Family Deduction	\$0
Total Deductions	\$3,030
Adjusted Income	\$17,259

CHAPTER 17 - VERIFICATION REQUIREMENTS

MINI QUIZ

- FALSE** 1. Once a family has signed consents for release of income information prior to move-in, the requirement is satisfied for the entire time they will be residing in assisted housing.

False. *It is required at interims and annual recertifications that consents for release of income information be collected again.*

- FALSE** 2. It is permissible for a housing owner to copy information received from a third party over the phone onto a verification form and sign the third party's name.

False. *It is never permitted for a housing provider to sign a third party's name.*

- FALSE** 3. The clock starts running on the valid time period of verified information subject to change on the date the verifier signs the form.

False. *The clock starts on the date the verification is received by the housing provider.*

Chapter 18 - THE LEASE MINI QUIZ

- FALSE** 1. It is required to **always** provide tenants with 30 days notice prior to any changes in the tenant's rent.

False – Owner must give a 30-day advance written notice of the increase unless the tenant fails to comply with the recertification requirements.

- FALSE** 2. Owners of 811 PRAC properties are permitted to modify their Model Lease.

False – 811 PRAC leases may not be modified.

- FALSE** 3. In a 202 complex sponsored by a church group, it would be permissible to make attendance at weekly church services a house rule.

False – House rules must be related only to the safety, care and cleanliness of the building or the safety and comfort of the residents.

The owner of the Aspen Apartments, a Section 8 family complex, has been burned on bad rent checks so many times that he has implemented a policy requiring rent payment by money order for all of his tenants.

- FALSE** 4. The owner's rent payment policy is in accordance with HUD policies.

False – An owner must accept any tenant's personal check unless the tenant bounces a rent check.

- TRUE** 5. An owner may refuse to register a pet when the pet owner fails to provide complete registration information.

True - An owner has the right to refuse to register (accept) a pet when the pet owner does not provide complete registration information as provided for in the owner's policies and procedures.

Chapter 19 - SECURITY DEPOSITS AND OTHER CHARGES IN ADDITION TO RENT MINI QUIZ

Milo Vanetti owns and operates the Biltmore Court, a 236 complex. When it came time for the Miltons, the family at the top of the waiting list, to move in, Mrs. Milton approached Mr. Vanetti and informed him that the family could not afford to cover its moving expenses and pay the security deposit. Mrs. Milton then asked Mr. Vanetti if he would be willing to set up a payment plan so that the Miltons could pay off the security deposit over time. Mr. Vanetti declined, saying he had been burned on payment plans in the past, and that if the family could not scrape together enough money to cover the security deposit, he would have to reject their application for housing.

- FALSE** 1. HUD policy in the 4350.3 does not permit owners to reject applicants because they cannot afford to pay a security deposit.

False – *Owners may reject applicants who cannot afford to pay the deposit at move in.*

- TRUE** 2. Charges for lockout calls are permitted.

True – *HUD regulations permit such charges.*

- FALSE** 3. Owners of HUD-assisted housing must make security deposit refunds within the longer of 30 days or the time period stipulated in state or local law.

False – *The owner must refund any amounts due the tenant within 30 days or less time required by state or local law.*

- FALSE** 4. One permissible way of dealing with tenants who do not pay charges for late payment of rent is to deduct the unpaid late charges from the tenant's next rent payment, and then pursue eviction for nonpayment of rent, saying that the tenant did not pay the rent in full.

False – *An owner may deduct accrued, unpaid late charges from the tenant's security deposit at the time of move out if permitted by state law; not from the next rent. Nor can an owner evict a tenant for failure to pay late charges.*

Chapter 20 - LEASING MINI QUIZ

TRUE 1. Owners perform unit inspections on at least an annual basis.

True – Owners perform unit inspections on at least an annual basis to determine whether the appliances and equipment are functioning properly and to assess whether a component needs to be repaired or replaced.

FALSE 2. The 4350.3 **requires** the use of Appendix 5 as the unit inspection form to be employed at your housing complex.

False – Appendix 5 is a sample Inspection Form; it is not a required form that owners must use.

FALSE 3. Briefings are **required** for all new residents.

False – Briefings are recommended, but not required.

Chapter 21 - ANNUAL RECERTIFICATION MINI QUIZ

- TRUE** 1. The earliest a tenant who did not comply timely with the annual recertification requirements set forth in the lease could be charged Market Rent would be the scheduled effective date of the recertification.

True – *The earliest a resident could be charged Market Rent would be his or her anniversary date.*

- FALSE** 2. The cut off date is the 10th day of the 12th month of the recertification period.

False – *It is the 10th day of the 11th month after the last recertification.*

- FALSE** 3. The EIU Income Report always replaces the need for third party verifications.

False – *The EIU Income Report may only be used at recertification as third party verification and only if the resident agrees the information is all accurate.*

- FALSE** 4. It is not required to supply the notice of denial of extenuating circumstances to handicapped/disabled tenants in accessible formats.

False – *504/FH requires an owner to provide all notices to persons with disabilities in an accessible format.*

Chapter 22 - INTERIM ADJUSTMENTS MINI QUIZ

- TRUE** 1. A resident must notify the owner if the family's cumulative income increases by \$200 or more per month.

True - Per the Handbook and Model Lease, a family is required to notify the owner when there is an increase of \$200 or more in income per month.

- TRUE** 2. The earliest an interim reduction in rent can be effective is the first day of the first rent period following the action that caused the decrease in rent, if the resident reported the change in a timely manner.

True – An interim reduction in rent becomes effective the first day of the rent period following the action causing the decrease.

- FALSE** 3. It is required to send tenants three ten-day notices for interim adjustments before raising their rent to the Market Rent.

False – Only one ten-day notice is required prior to raising the family's rent to market rent the following month.

- TRUE** 4. It is necessary to obtain consents for release of income information from any household members who have turned 18 since the last time the family was certified or recertified when you are already processing an interim.

True – Owners must verify if any family member has turned 18 since the last annual, and if so, obtain that person's signature on the consent forms.

- FALSE** 5. Owners are **required** to force tenant households that are no longer in compliance with a projects occupancy guidelines to transfer to a more appropriate unit.

False - Owners may allow a tenant to remain in the unit.

Chapter 23 - TERMINATION OF ASSISTANCE MINI QUIZ

- FALSE** 1. The 4350.3 requires owners to terminate the tenancy of tenants who refuse to transfer to a unit of appropriate size within 30 days of being notified to move.

False - The regulations do not require termination of tenancy; they do however, require termination of assistance.

- TRUE** 2. Termination of assistance does not apply to 202 PRAC and 811 PRAC apartment communities.

True – The 202 and 811 PRAC programs do not allow for termination of assistance.

CHAPTER 24 - TERMINATION OF TENANCY AND FRAUD MINI QUIZ

- TRUE** 1. All successfully prosecuted evictions are terminations of tenancy, but not all terminations of tenancy are evictions.

True. *The broad term “termination of tenancy” covers a tenant’s moving out of a project for any reason - moving to another state, dying, sneaking out in the dead of night, and eviction.*

- True** 2. Sam is a four year old member of the Hawkins household, living in a Section 8 development. Sam does not have a SSN on file. The family has 90 days after admission to disclose and provide verification of Sam’s Social Security Number, with an optional 90-day extension.

True. *Owners must terminate tenancy of the tenant and the tenant’s household if disclosure and verification of SSNs has not been satisfied within specified timeframes. Specifically, this requirement extends to those households with a child under age six who does not have a SSN. The household has 90 days after admission to disclose and verify a SSN for that member, with an additional 90 day extension period, if applicable.*

- FALSE** 3. The Deceased Tenant Report must be run at least monthly by the owner.

False. *This report must be run at least quarterly.*

- TRUE** 4. The 4350.3 REV-1 does not stipulate a notice period for eviction for non-payment of rent.

