



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

JUL 13 2004

Ms. Kris Cook, CAE
Executive Director
National Affordable Housing Management Association
400 N. Columbus Street, Suite 203
Alexandria, VA 22314

Dear Ms. Kris:

Thank you for your letter discussing clarification of the requirements outlined in HUD Handbook 4381.5 (ref: Retirement Accounts for Front-line Staff). Your attachment discussed three issues of concern that pertain to HUD's guidelines in applying Employee Retirement Income Security Act (ERISA) rules and our auditing process and procedures of a qualified retirement plan.

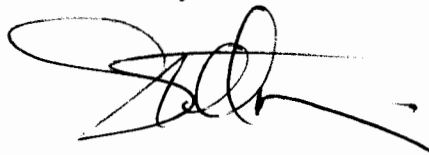
The Office of Asset Management examined the issues in your letter and is in agreement that there are conflicts with ERISA requirements in HUD policy for retirement plans. The Department offers the following in reply:

1. To coincide with ERISA Code 29 C.F.R. 2530.202-2 (Eligibility Computation Period requirement), HUD Handbook 4381.5 Section 6.38e(2)(b) will be amended to reflect a minimum of 20 hours per week or 1,000 hours annually for eligibility in a qualified retirement plan.
2. HUD does not require a separate retirement plan from the one approved for the company, for front-line staff. There is a misunderstanding of the Handbook 4381.5. HUD requires:
 - a. The plan is a qualified plan approved by federal, state, and local laws and regulations governing such programs.
 - b. There is no commingling of employee accounts.
 - c. Contributions for eligible employees not exceed ten percent of the base pay of employee. This was changed in 2001 from 5% to 10%.
 - d. Employees to be 100 percent vested within five years.

HUD Handbook 4381.5 6.38 (a)(1) (Front-line costs and Day-to-Day Activities), Figure 6-2 "Costs Paid from Project account" approves costs of IRS Section 401-K, 125, and 403-B, and related retirement and health plans for on-site staff. HUD 4381.5 6.38 (a)(2) states if "Front-line management functions for several properties are performed by staff of the agent operating out of a single office the following condition apply." (2)(a) "The agent must prorate the total associated costs among the projects served in proportion to the actual use of services."

As soon as possible revised guidelines for retirement plans will be issued to correct conflicts with other governmental rules. Further questions should be addressed to Roland C. Diggs, II at (202) 708-1320, extension 2601.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Knight', with a large, stylized flourish at the end.

Stillman D. Knight
Deputy Assistant Secretary for
Multifamily Housing Programs