National Affordable Housing Management Association

526 King Street
Suite 511
Alexandria, Virginia 22314

Comments are also being submitted on behalf of the National Center for Housing Management and the Southeastern Affordable Housing Management Association.

All comments are concurred in by all three organizations.
May 30, 2002

Comments Questions and Issues related to
HUD Handbook 4350.3 - Occupancy Requirements of Subsidized Multifamily Housing Programs
May 8, 2002 Version

NAHMA, NCHM and SAHMA are pleased to submit our comments, questions and suggestions for revisions to HUD for its consideration in the final review of the 4350.3. The materials below and on the following pages were developed by our Regulatory Affairs Committee in consultation with the general membership. More than 30 of our member firms participated in the review process. The firms represented range from those with revenues under a million dollars a year, to our largest member firm, a REIT with more than half a million units under its management. Our principal reviewers were management and regulatory compliance executives--each with more than 20 years experience in direct management of assisted and affordable properties. The review team also had three lawyers with extensive housing experience, and one lawyer who is expert in Fair Housing matters. A partial list of contributors and the full committee roster is on the last page of this submission.

Given the infrequency with which this handbook is rewritten, and the central role it plays in the operation and regulation of HUD assisted housing, Rural Housing Service properties with joint HUD assistance, Section 42 Tax Credit Properties, and state agency financed Bond Properties, we think that the broad consultation undertaken by the Department is appropriate. We hope that care will be taken during the comment review process to correct the problems that we and others have found in this manual, and to address concerns and issues that arise from the review.

We would hope that the Department will hold at least one more stakeholder meeting to report on changes made and issues raised, prior to putting the manual into final clearance and locking the contents from any further change. **With a manual as central to the process of regulation as the 4350.3 it is far more important to get it right than it is to get it soon.** We urge HUD to review all comments from all sources with care, and to address both technical and programmatic issues that are raised. We stand ready to address follow up questions and to sit down with the Department to elaborate on issues raised herein.

Comments of general application to the entire manual:

- **The arrangement and setup of the new manual is a substantial improvement** over its predecessors. The type and quality of exhibits, and other explanatory material is greatly improved. The move to an Adobe Acrobat platform for the base document is appreciated, and will ensure that printed materials are clear, and easier to understand. We note that there are some technical issues with the Adobe layout that need to be addressed. The document prints differently on different general printer types, and the soft font support needs to be reviewed particularly to ensure that on laser printers the document does not "squash" the final lines of tables or boxes, words are spaced properly, and that the search functions are fully enabled. We found in experimenting with the document that the older the computer and printer used the more problems were exhibited. Printing with a new Hewlett Packard 4100 LaserJet on a WindowsXP Professional computer was flawless, while printing on an HP LaserJet 5 of 1995 vintage with an computer of 1997 vintage resulted in numerous soft font and page layout problems. While we encourage our members to adopt new technology every three years, that is not yet generally the case, given that distribution of the final document will largely be electronic, we think this area merits close attention.

- **The tone of the document is somewhat choppy**, and we note that there are variations in style. The same items are referred to differently in different parts of the book, and internal references are not consistent. In a number of cases there are two different definitions for the same term, and the current glossary has multiple entries for the same item in a lot of cases. Similarly, we caught a number of places where key terms or issues have no definition in the glossary. While the majority of the document is done in a neutral tone, in reading and reviewing the handbook, a number of our reviewers commented on what they perceive to be an anti-Owner / Manager bias in Chapters 7 and 8. No one, least of all those of us who have to go to court regularly, takes the termination process lightly, or enters into it for improper reasons.

- **The document was released for review with a key component missing.** We will comment on Chapter 6 in greater detail later, but we recommend that the revised handbook be released with Chapter 6 reserved as to lease issues until all the stakeholders have had the opportunity to review and comment on the revised model leases, which now appear to number 4. The Department has been promising us a revised model lease since September 2001, and we are still waiting. The revisions to support the One Strike initiative that we jointly drafted with NLHA occupy only one page; how one page of revisions can take a year to draft is a complete mystery to us. It is not possible to do a comprehensive, or even a cursory review of the sections of the book dealing with lease issues without the base document. We are formally requesting that Chapter 6 be re released for review and comment when the revised model leases become available.

- **We are disappointed that Tax Credit and RHS properties are so inadequately covered.** We understood that both the IRS and USDA were consulted in the structuring of this document. There is insufficient comment Section 42 rent setting, subsidy rules in mixed Tax Credit and Section 8 properties. Income and tenant qualification issues are

insufficiently covered. This handbook is used as a base document in both programs, and should reflect the additional rules and issues that arise in RHS and Tax Credit properties.

- **There is no distinction made between Statutory, Regulatory and Handbook provisions**. Given that the policies and procedures for waivers are different for Regulatory and Handbook provisions it is useful for both Owners and Regulatory Staff to be clear on where provisions come from so that they do not waste time or effort. Adding a left column to the text noting the relevant regulatory section would be particularly useful for newer Contract Administration and HUD Staff who are not as fully conversant with the Handbook as are veteran staff and Managers.

- **Continuation headers are needed** for paragraphs, sections, and sub paragraphs that bridge more than one page. In the new easier to read format (which we don't want to see changed) some paragraphs bridge as many as 8 or 10 pages, and without continuation headers becomes quite difficult to follow.

- **The Handbook**, which by any definition is massive, **needs an index**. From our perspective, the good news is that both Microsoft Word (which is the base form of the document) and Adobe Acrobat have excellent index generation functions. The bad news is that someone or group of people will have to spend some time indexing and refining the index. This should not be published without an index.

- **The Handbook lacks clarity in many sections**. The last time this Handbook was revised, all of us were still largely on manual form based systems. HUD was still paying assistance from paper vouchers hand entered into automated systems. This iteration is being released into a third generation automated systems environment, where paper and human intervention are the exception not the rule. While ambiguity is useful in some situations, it is deadly in systems design and automation. Given that the provisions here form the base documentation for software vendors to design and refine the current TRACS software, all processes need to be reviewed to ensure that the resultant software code can be robust. We will cite a number of instances where greater clarity is needed.

- **The addition of URL's to the document is welcome**. Unfortunately the HUD web site staff has an unfortunate habit of changing bookmarks and pointers on a regular basis, and all the bookmarks will likely become obsolete in less than a year. There is a solution, and provided the policy division within Housing can convince the information technology folks to use change pointers consistently, having the URL's in the book will be useful. If that is not possible, we reluctantly recommend deletion of the URL's. It would be a huge benefit if the CFR and Federal Register references in the document were set up as hyperlinks to the Government Printing Office web site. In that way any reader of the document with access to the internet could see and download the base regulatory materials easily at no cost. A full set of 24 CFR costs $208 in hard copy; the hot link approach will save a lot of readers a great deal of money.

Comments on the Glossary -
We are taking this part first since the balance of the 4350.3 drives in part from the Glossary.

While a glossary is an important element for a handbook of this nature and complexity, the glossary as contained in the Handbook leaves much to be desired.

A glossary should, more than anything else, be authoritative. When one looks into a glossary to see the definition of a term, the definition should be concise, clear and accurate. This draft fails on each of these grounds in many respects.

To start out with general comments, it is not clear that each term needed to be defined is found here. Further, there are some terms which are defined more than once, with subtle distinctions found in the definitions. Third, there are some terms described very expansively, with policy statements contained in the definitions (and not found elsewhere in the text). Finally, there are inaccuracies in some of the definitions.

Following many of the definitions, HUD has cited a regulatory section. This is all to the good, and there should be more such cites throughout the text. But the problem is that, in some instances, the definition is a word for word copy of the regulation, and in some cases not. In some cases, the definition of the term is based on a regulation that uses that term in a specific context, or for a specific program, and the limitations occasioned by the inclusion of such a definition is not set forth.

Clearly, where the definition is a direct quote of a regulation, the text should say so. Where the definition is used in some contexts, and not others, the glossary should make that clear. Where there are multiple definitions of the same terms, the different sources of such definitions, and the differences to which the definitions should be applied should be made clear.

Comments on specific glossary definitions:

50059 Data Requirements should contain a citation which would enable an interested reader in finding out what these requirements really are. The citation could be to a site in the handbook itself, or an external site.

In Accessible (504), HUD tries to be politically correct and change "handicaps"(used in the regulation) to either "disability" or "impairment". This is a different treatment from what is used in subsequent definitions where both terms are used, one in parenthesis. The regulatory word in the Section 504 context is "handicaps", and it probably should not be blithely changed here. Other than this word change, the handbook took an italicized phrase in the regulations *"accessible to and useable by*", took it out of italics, and added some commas which make little grammatical sense. You would think that it would have been easier to simply quote the reg. The same is true of HUD's treatment of Accessible (FH).

In Annual Income, HUD changed the regulatory definition by adding the word "co-head" and using the phrase "by regulation" instead of citing the particular regulation used in the regulatory definition. Again, the changes are not necessary.

For Assets, the handbook uses a definition which is different from a dictionary definition of a common word. It then cites to an Exhibit. Rather than attempt to forge a limited definition for a word which is used commonly, the citation to the Exhibit would suffice.

The definition of Basic Rent fails to mention Section 8 or RAP payments which can reduce the rents that tenants pay in 236 properties, and incorrectly states that the Basic Rents always reduce the mortgage rate to 1%.

In the definition of Adaptability, HUD quotes from a regulation, but leaves out an entire phrase. with or Without handicaps, or to accommodate the needs of persons should be added in the third line, before the words "with different...."

Similarly, in Adjusted Income, the phrase "unreimbursed medical expenses of" need to be placed before "an elderly or disabled family...." This definition comprises only part of the regulatory definition. Reference to the regulation for full text should be given.

Under Adult, there is no definition of "emancipated". This term is referred to elsewhere in the glossary with a direction back to the text, but a definition of Emancipated Minor might help. See the reference in the definition of Co-head of Household, for example. It would also be useful to take a policy position on very young emancipated minors. In some states, Mississippi and Arkansas to name two, a female as young as 13 can be emancipated. We have concerns about 13 year olds as heads of household.

Contract rent has an inappropriate reference to "this" unit. We are not certain that Contract Rent should be used to refer to rent set by other than contract (such as a BMIR rent or a 236 rent), but so be it.

The definition of Covered Housing is taken from the new regulations only fighting crime, and does not fit the handbook which does not deal with each of these programs (or define them). We could find no reference to this in the Handbook.

The regulation cited in the definition of Deductions has an additional section referring to specific program related deductions, which should be inserted here.

The definition of Developmentally Disabled refers to Persons with Disability, a term defined in three different ways in the Glossary, without referring to which definition. Again, these definitions should always cite the programs for which they are applicable.

The Disability definition leaves out the words "a person as" following "renders".

In Disabled Family, there is an unclear reference to "subpart E of this Part".

In Disparate Impact, it would be clearer to use the term "of a particular", rather than "based on the prohibited bases of".

In Elderly Family, there is an inappropriate reference to "this part". Also, the following phrase was omitted from subparagraph (4) after "living together": "or one or more such persons living...".

The definition of Eviction adds the words "by judicial action" to the regulatory definition and omits, the final regulatory phrase "or at the end of a term". Why?

Under the definition of Extremely Low Income Families, the regulatory possibility that HUD could vary the 30% standard up or down in certain instances, has been omitted.

There are two definitions of Federal Financial Assistance (Section 504). The second is in fact a subset of the first. Their order should be reversed, and they could be combined into one.

We are concerned about the layman's definition of Fraud. We think there should be a qualification of some sort so that it is clear that this is not necessarily the legal definition in particular cases.

We are not certain of the source of the Fundamental Alterations definition. The source should be cited. In the NOTE under that definition, the word "corporate" should be stricken both times it appears, and the word "typically" inserted after "financial assistance is" in the third line.

The Income Limit definition is not all inclusive, omitting, for example, the definition used for BMIR projects.

It should be made clear that Income Targeting is only for Section 8 properties.

There is a discussion under the definition of Live-in Aide that gives suggestions to Field Counsel as to preparing lease addenda, which is out of place in a Glossary.

The definition of Management Agent implies that HUD does not approve the management agent's identity if there is a contract administrator.

In Market Area's definition, there is a specific reference to a four county area being the market for a group home, which cannot be a universal rule.

The word "covers" would be better than "includes" in Minimum Rent.

In Operating Rent (PRAC), the term should be "operating", not "gross", rent.

The definition of Owner is really strange. We think it is only the definition used for Privacy Act purposes. Certainly it should be not used an a universal definition.

The definition of PAC has the term PAC in the definition. It does not describe the term as being

limited in use to certain 202 projects, as it should for clarity.

The varying definitions of Persons with Disabilities should be designated as program specific. The definition of this term that starts on page 20 combines an older 202 definition with the current 811 definition, winding up with a definition used by neither program. Direct regulatory quotations would be better. (The reference to 42 USC 6001(8) in the printed regulation is to 6001(5). We have not checked which is correct.)

The definition of Pet Deposit leaves out a large part of the regulatory definition following the words "pet in the project" which needs to be inserted for comprehensiveness.

We are not certain what the last sentence of the definition of "Prohibited Bases" adds.

The term "notice" is not defined under the definition of Property Established for the Elderly or Persons with Disabilities. We assume this means a notice published by the Secretary defining certain properties as for the Elderly, but this is not clear.

The definition of Responsible Entity is for the limited purposes of the regulations dealing with crime fighting. This should be made clear.

The Rent Supplement definition should state that this is a "subsidy" program and that the insurance comes not from the Office of Housing, but from the Secretary.

There is a definition of Rural Housing Service, but in the text there are references the Rural Development Administration. Both should be defined.

Section 8 should be limited to those Section 8 programs governed by this handbook.

In the Service Bureaus definition, it does not say who approves the special claims.

We know a lot of Single Persons who do not "intend" to live alone.

State Landlord and Tenant Acts don't necessarily provide for evictions for all lease violations. The regulatory citation, which comes from the regulations dealing with evictions, references evictions in the definition, so this is not a broad enough definition of this term.

Our belief is that the Structural Change definition has been too particularized.

We do not think that the definition of Subrecipient is needed at all. If it is, one must be crafted, and not taken from the definition found in the regulations dealing with non-profit grant administration.

The word "occupying" should be stricken from the definition of Tenant.

The definition of "tenant consultation" is much too narrow.

In Tenant Rent, reference is made twice to “essential housing services”, but the definition of this term is unclear.

The definition of Termination of Assistance mixes up policy with definition.

The definition of Termination of Tenancy is too complicated; reference can simply be made to the lease.

It is hard (impossible) to imagine that a total tenant payment could exceed a Section 202 Operating Rent level.

There is a mixture of policy directive and definition in Unauthorized Occupant.

The very long explanation of Undue Benefits should be somewhere else, not in the Glossary.

Under Unit Transfer, an owner does not necessarily approve such a transfer, but can direct it.

We are not certain where the Welfare Assistance or Welfare Rent definitions came from, or why the term Welfare Grant and not Welfare Assistance is used in Welfare Rent.

In the specific chapter reviews on the following pages, we note a number of missing or incorrect Glossary items.

Chapter 1

While the first chapter does provide some useful introductory material, there are a number of items left out which should be included.

Perhaps most important would be a discussion of the purpose and authority of a handbook. It should be made clear that the handbook should serve a number of purposes, each of which is outlined in the introductory chapter. In the draft, each of these topics is touched upon, but there is no consistent methodology on which the reader can rely.

First, it should put into one place, all of the requirements and policies of the Department with respect to a specific topic (in this case, project based subsidized housing occupancy issues), and that, except to the extent that it references certain other sources, it serves as a guideline.

Second, it should cross reference all other sources for related material. The draft handbook does this to some extent, but insufficiently. Citations should be provided for statutes, regulations, websites, and other directives and publications.

Third, it should clarify that the handbook sets forth information from a number of sources—statutory information, regulatory provisions, contractual requirements, and policy positions. To the extent possible, it should be made clear throughout the handbook, which statements are statutory, which are regulatory, et cetera. And the first chapter should state that this will be done, and describe how it is being done.

Fourth, the handbook should refer to ambiguities–that there are situations that will arise that will not be directly on point to a handbook provision, and how these should be approached.

Fifth, the handbook should refer to HUD organization, headquarters, HUBs or regions, field offices, and auxiliary offices. It should be stated that within the handbook reference will be made to what offices have authority over what actions, and how and when appeals can be taken.

Sixth, the handbook should refer to responsibilities of various out-sourced entities, such as Section 8 contract administrators, with specificity as to the scope and limitations on their authority.

Seventh, it should provide instructions for how to obtain waivers, and guidance as to when waivers are necessary.

Eighth, it should provide for continual updating, something that should be much easier, now that the internet is so pervasive. A model for this type of updating is OMHAR, which posts changes on a very regular basis on its website.

Ninth, As we look at this chapter, and the ones that follow, we are struck by the emphasis on manual calculations, and analysis. The reality is now, some eight years after the introduction of TRACS, and with HUD's push to automate both the operations of subsidy administration and qualification, this handbook largely ignores the relationship to TRACS. There is a distinct lack

of links to TRACS and software design and maintenance issues. The Department can't have it both ways; either we are all going forward into an electronic future or we are not. Retaining requirements to keep many documents in hard copy, print periodic backups to hard copy, and regulating on the basis of hard copy is both in contravention to stated HUD policy, and increasingly untenable. The costs of dropping purely electronic items to print is considerable. If HUD wants this they need to be prepared to pay for it. The private sector apartment business is well on the way to fully paperless. Indeed, there is not one reference in the entire manual on the acceptability of adopting a direct electronic bank draft, or transfer payment draft system. Virtually all larger conventional apartments now have those systems available.

Specific comments:

Page	Part	Sub Part	Comment
1-1	1.1.B.		The use of the term "governing" implies that the handbook is itself legally binding. The use of this word, and words like it, is repeated throughout the book. A better word would be "affecting".
	1.1.D.		To say that the handbook "does not supersede any Contract Administrator's or owner's rights, obligations or requirements" is erroneous. Obviously, it does, as the next 600+ pages show.
	1.2.B.	1.	In stating that state agencies may enforce state requirements "as long as they do not conflict with this handbook or HUD regulations" is the first in a number of provisions in the handbook dealing with issues of federal preemption. Unfortunately, they are uniformly inaccurate, and provide a very misleading slant to the publication. Preemption is a very difficult issue in subsidized housing, and pat statements like this are not helpful. It would be better to state the issue much more ambiguously, so that readers would know that individual attention would need to be paid to matters appearing to conflict with federal requirements. With this in mind, this is also the first place that handbook provisions are treated as if they are as sacrosanct as regulations, which they of course are not. This is another pervasive problem throughout the handbook. As to covering state agencies generally, the handbook, by paragraph 1.1.C does not appear directed to them. Perhaps it should be.
	1.2.B.2.		What is the authority to require that state agencies certify that their policies and guidance do not conflict with federal statutes or regulations? Who is to do the certification, and where does it go? What if the certification is not possible?
1-2	Figure 1-1.		Should it be clarified that the project based section 8 program

		administered by PHAs is not covered? This would also be reflected in 1.2.C.D., as would HOPE VI. Also, there is no mention in the handbook of the flexible subsidy program, which, through its use agreement restrictions, gives rise to additional HUD oversight and income and rent restrictions policed by HUD, even after a loan is paid off. If the flexible subsidy program is not to be covered by the handbook, there should be definitive citations to appropriate regulatory sources.
	1.2.C.1.c.	The date that subsidy contracts were signed or took effect may not be the standard that demarcates contracts falling under one provision to contracts falling under another.
1-3	1.3.A.2.	There is no discussion of Section 231 on Figure 1-1. We are not sure why it is included at all since it is not a subsidy program. If it is included because of subsidy add-ons, like LMSA Section 8 or RAP payments, you would think that Section 221(d)(3) market rate, or Section 221(d)(4) would be added on, as well.
1-4	1.3.B.	Suggest changing the strange term "loan grants" to "assistance".
1-5	1.C.3.d.	We believe that PD Section 8 has also been made available for some formerly 221(d)(4) or 221(d)(3) market rate properties. The previous insurance program should make no difference to the current owner.
1-7	1.4.	We think that the definition of contract administrators is confused. There are two types, but they are not co-equal. There are the old fashioned contract administrators who are actually one of the contracting parties. They receive the Section 8 funds through an ACC, and in turn sign the HAP contracts with the owner. These are referred to in the handbook as "non-performance based", but their distinction as contracting parties is overlooked. The second type of administrator is a party who contracts with HUD to perform strictly contract or asset management services, and are referred to here as "performance based". The responsibilities of the non-performance based administrators is clear, having been developed over a long period of time. The activities of the performance based administrators are much more in flux. Throughout the handbook, there are references sometimes to "HUD", sometimes to "HUD and Contract Administrators" and sometimes to "HUD or Contract Administrators" without any attempt to define which entity has responsibility for various matters. This is an area of crucial importance for an owner or manager relying on this handbook

for guidance. If this is not the publication to lay out the boundaries of the responsibilities of the performance based contract administrators, it is crucial to direct the reader to appropriate locations for making this determination.

1-8 1.5.A. Here is another example of the conflict issue. To suggest that "if other federal, state or local laws conflict with HUD requirements, owners must contact the HUD Field Office or Contract Administrator for guidance" raises many of the issues already discussed, including:
1. Who determines that there is a conflict.
2. How does the owner know what is a HUD "requirement" if the differences between regulations, statutes, handbook provisions, etc. are not spelled out?
3. Is it an option to contact the field office or the administrator, or is it only the administrator if one exits?
4. Is it deemed to be mandatory that the owner contact one of these parties?
5. If it is to receive "guidance", does that mean that only "guidance" as opposed to "direction" will be given?
6. Who at the HUD field office is to be contacted?
7. Why is it assumed that the HUD field office or the contract administrator would be the appropriate party to provide this sort of guidance, since we are dealing in these instances with difficult legal issues, some (many) of which have no clear cut answer?
While parsing this sentence in this detail may appear to be simply an attempt to create a reductio ad absurdum, we do not think this to be the case. We think that an analysis of these elements of criticism is crucial to the extent that this handbook is meant to provide definitive guidance.

The question raised by this section is elevated to a greater level in 1.5.D. where it is categorically stated that,

"If, however, the more rigorous standards derive from State or local law, and prevent the owner from achieving a level of residential income necessary to maintain and operate the property adequately (including sufficient funds to meet the projects [sic] financial obligations under the mortgage), the owner, with the consent of the HUD field office, may declare the federal standard as controlling with respect tot he state or local requirement in question."

This is a groundless statement that, in addition to being erroneous from a legal perspective, is nothing if not an invitation to expensive, embarrassing and losing litigation.

1-10 1.7.A. In addition to citing other handbooks, there are other HUD Notices

		and directives that should be cited, along with all statutory and regulatory citations. These do not have to be listed up front, but should be cited throughout the book, as applicable. There are additional handbooks, such as those issued with regard to Section 8 contract renewals, and by OMHAR that should be listed, as well.
1-11	1.7.C.	With regard to the various internet sites, as mentioned earlier, we think the listing is a good idea. But it is important to insure that the URL's don't change, or that change pointers are used. Also, it is important to review the book to ensure that the websites listed are on the public access side of the HUD firewall. The Front end review site listed is not available to anyone outside the HUD firewall. We think that HUD should set up, for example, a web page for this Handbook 4350.3, which will maintain in an up to date manner listings of all cross references, and will, as the OMHAR website does, provide a posting of all changes so that the users can keep up to date. (HUD could do this for other major handbooks as well, with appropriate cross-referencing.)
	1.7.C.3.	The reference to "the change of" is appropriate in the opening sentence; its deletion would not omit anything of relevance to the reader.
1-12	1.7.C.7.	This lists another brochure, without giving an address through which it can be obtained. We believe that this can be downloaded from the HUD Office of Housing website.
1-13	1.8.A.	This section correctly states that there are matters that can be waived, and those that cannot. But without a differentiation throughout the handbook, it is not clear which "directives" can be waived and which can not. Further, to our knowledge, all handbook provisions can be "waived" at the field office level; we are not aware of any HUB involvement (except, perhaps, on appeals). If we are correct, this can be clarified. Finally, it should also be stated that regulations can be waived, but that a more formal process is involved, with the waiver signed off on at the Assistant Secretary level in HUD headquarters.
	Figure 1-2.	This is a very helpful chart and, based on a quick spot check, and our own experience, looks accurate. (They could put "eq seq." after 42 U.S.C. 13611.)

Chapter 2

On the matter of Cash Payments - On page 2-35 in the example, there is a mention of

requiring an owner/manager to accept cash payments. While NAHMA is a supporter of all aspects of fair housing, and actively encourages its members to work to ensure that the Fair Housing Act and Section 504 are fully complied with at all times, suggesting in any way that cash payments are acceptable is wholly inappropriate.

One NAHMA Member has had a site manager murdered over cash, and a number of NAHMA members have had managers and site staff robbed. As a matter of policy, NAHMA is unalterably opposed to any suggestion, or requirement that an owner has to accept cash. We hold the safety of our site staff paramount, and to compromise the general practice of not accepting cash at the vast majority of our member sites is unacceptable. We trust that this example was merely poorly thought through, and does not represent HUD policy in any way. We want this example deleted or changed prior to publication of the final 4350.3.

This chapter has varying references. The terms "Family" and "Household" appear to be used largely interchangeably; one term should be chosen and used throughout. In reviewing this, we came to the conclusion that "Family"means everyone in a traditional or extended nuclear family except for Foster Children and Live in Aides. We concur that Aides are not by job position family members, but we are confused by the apparent exclusion of Foster Children. The full definition of family and household should be added as key terms and put in the Glossary.

Specific Comments:

Page	Part	Sub Part	Comment
2-2	Figure 2-1		Add the following Key Terms to this Figure. They have Glossary definitions, and are introduced in the Chapter, but are not included in the Figure: 1) Qualified Persons With Disabilities 2) Premises
2-3	2.4		Including Age in this list is confusing because the Fair Housing Act does not protect Age. This category is covered only by the Age Discrimination Act.
2-5	2.5		This is the first of repetitive references to reasonable accommodations and modifications. There are so many of these references as to be redundant. Recommend these references merely refer back to an original thorough explanation of the providers responsibilities. (Other references found at 2.5C)
2-5	2.5 B2.		Fails to mention undue financial burden standard
2-5	2.5 B3		"Segregation" is more like "steering" than "disparate treatment." Recommend the term "steering" be substituted for "disparate treatment."
2-5	2.5 B5		We applaud the explanation that reasonable accommodation does not affect the owner's screening or eligibility standards. There is much confusion over this concept. Could use an example here to clarify,

		the section also fails to note Limited Civil Rights Reviews.
2-5	2.5 B6	Good example of the fact that religious preferences cannot be provided by faith-based organizations.
2-5	2.5 B7.	Reads poorly, the context is not accurate.
2-5	2.5 B10	The Note is confusing, and should be reworded with an example.
2-6	2.5 C	Add fundamental alterations language and better explanation of reasonable accommodations. Owners have right to deny
2-7	2.5 D 2	AFMP is not required as Chapter 4 says. The 5 year frequency has no basis in law. While 80.25.1 Handbook Rev 2 details the requirements and defines significant changes in this instance the change in the law adding disabilities would potentially trigger a change, but there is no time based provision. There needs to be greater clarification on time based provisions, because time alone does not trigger the provisions.
2-7	2.5 D 3	This paragraph is just enough to confuse readers. Either the full text of EO 11063 should be put into the book at this point with an explanation of how it works, or the reference should be deleted. While larger owners with compliance divisions have the resources to train on issues like EO 11063, single asset owners who are not sophisticated will be confused by this section and find getting further information difficult. It is no exaggeration to say that most HUD Field office asset managers will not have a copy of EO 11063, nor will they be able to advise on its use.
2-7	2.5 D 2 e.	This requirement needs to be clarified where one owner, partnership, or syndicate employs multiple managing agents. Since the FH&EO testing systems focus on properties run by a single agent, you could well develop a situation where if the owner maintained consistent policies, a large Fee Managing agent would have multiple policies and standards which is a recipe for disaster.
2-8	2.7	The paragraph needs removal or clarification. It has nothing to do with qualification. We find the tone condescending.
2-8	2.8 A	". . . it differs in that it also imposes broader obligations on owners of federally assisted housing to make . . ." This should be both, the book is not consistent in naming both.
2-9		The sunset provisions of transition plans need to be detailed. Transition plans are a one time event.

2-9	2.8 B.	Provisions here conflict with currently promulgated TRACS accessibility standards. The two need to be comported and one standard utilized.
2-9	2.9 A	Where citations are included of documents that are not generally available to smaller owners and managers, add the full section in the appendix. Title VI is not generally available, even on the Web. We have looked. We recommend including the CFR cite for these rules because they are not well known by either the HUD staff or housing providers.
2-10	2.10 A3	Many HUD staff and Contract Administrators recommend that a housing provider "guess" when an applicant fails to fill in the race or Hispanic indicator. This is a terrible idea and should be discouraged in this section. The provision of such information should be voluntary, and should not be the subject of "guessing" by a provider.
2-10	2.10 B2 a, b	This section should probably appear in the 4350.1. Instead of only referencing HUD staff, Contract Administrators should also be granted access to relevant records.
2-11	2.14 B	It also should be noted that federally assisted elderly properties may not deny housing to an otherwise qualified applicant because the applicant has children.
	2.14 B 2	This is not done where there are mitigating circumstances. The explanation here is overly simple.
2-13	2.17 B 1 Note	This is a poorly constructed note. It mixes in very subtle issues on Alcohol which confuse rather than clarify. Use a different example.
2-13	2.17 C	Religion was omitted from protected classes
2-14	Examples	Both are overly simplistic, and deal with source of income which is handled differently in different states. Any discussion of this issue needs to deal with the different state laws.
2-15	2.19 B3	We recommend the addition of the underlined word in the following sentence: "Threatening an employee or agent with firing or other negative action for any lawful effort to help someone rent a unit."
2-15	2.19 B5	While this is a discriminatory practice, this is not a retaliatory practice, and should instead be included in Section 2.15.
2-16	2.21 C	Undue burden portions of statute and regulations not addressed.

2-18	2.24	The terms modifications and reasonable accommodations are mixed and essentially reversed from past practice.
2-18	2.23 D.	Is the 15 or more unit or 15 or more employee test based on the project at issue or the owner's entire assisted portfolio? The current wording is not clear on this point. See also paragraph 2.27
2-19	2.24 A2.	Must is not correct, Should is the correct term.
2-19	2.24	The materials here appear to conflict with materials on page 2-36.
2-19	2.24 B	The barrier does not have to be permanent, see UFAS 4.4.2
2-20	2.25 A-F	All Technical resources should have fixed URL's or be available from the 4350.3 Web Site we mentioned earlier.
2-21	2.26 D.	The requirements here are subject to limitations, those are not noted.
2-21	2.27	You may well want more than one person handling 504 matters, focus is good, but this is overly prescriptive.
2-22	2.28 B2	In many instances it would not be reasonable for an owner to provide an interpreter for an individual applicant or resident (as opposed to providing an interpreter at a meeting), nor would it be reasonable for an owner to have documents printed in Braille if other, less expensive and burdensome methods of communication are available and can be used. These examples are correctly used in Exhibit 2-2, but are not clearly stated in the text of this section.
2-23	2.28 C 4	2.28 C 4 is not consistent with that in 2.28 C 5 c and exhibit 2-23. The latter two references mention only 15 or more people. Not 15 or more units. As a separate issue, the industry is not clear on the meaning of the requirement for language about nondiscrimination mentioned here in sub-paragraph C and in exhibit 2-23. The question is whether the guidance applies to "internal" communications--model leases, verification consents, notices of rent increases, notices of application for a gross rent increase, recertification reminder notices, etc. or whether the guidance applies only to communications with the "public" as referenced in the exhibit. If the requirement applies to ALL communications, then the various examples of letters and notices throughout the handbook should include such a reference.
2-24	2.28 D	It should be clarified that since all telephone companies are required by the ADA to have an access system, individual owners are not

		required to have TDD. Instead, the owners should be able to inform callers how to access the telephone company's system and be familiar enough with the access system to comfortable perform within the system if necessary. These provisions within Section 504 were written long before the ADA and therefore, fail to acknowledge its requirements.
2-26	2.30 E 2 5	The better general practice is to ask everyone.
2-27	2.30 F	In addition to the four instances cited where an owner may verify a person's disability, the need for the design features of an accessible unit should be added, and in d. the words "or modification" should be added to reasonable accommodation.
2-29	2.33 C	The Self Evaluation applies only to polices and procedures, structural items go in the transition plan.
2-30	2.33 E 3	Strike after "HUD's minimum requirements for the plan..." There is no requirement for subsequent plans.
2-32	2.34 C 2 B	The undue burden issue not noted.
2-34	2.38	The Terms Reasonable Modifications and Reasonable Accommodations are being used interchangeably when they should be set out separately. 2-41 2.41 as well.
2-36	2.41 B.	Our read of this paragraph runs counter to 24 CFR part 8 sec 8.83; this section should be re-reviewed
2-37	2.42 C	The example is a modification not an accommodation. Example on reserve levels appears to fail current tests as to replenishment. The size of the reserve as well as its replenishment level must be taken into consideration. Each field office has different standards on minimum per unit amounts that take into account the different cost levels, and complexity of the buildings. More exposition is needed.
2-38	2.42 E	The analysis for determining undue financial burden should be repeated in this section, rather than referring to another handbook.
	Example	The last two lines of the Example are terribly confusing. We had to read it several times to understand the intention was that the modification would not be an undue administrative burden. Might read better as: "If the owner or manager refuses to permit the applicant to mail the rent payment, it will be a violation of 24 CFR 100.204, as this is not an undue administrative burden, and will not allow the applicant equal opportunity to use and enjoy the unit."

2-39	2.45 C 1	This appears to be a new requirement not in regulations or handbook. We see no regulatory authority to require, and access is a problem. Give the complainant HUD's phone #.
2-47	Exhibit 2-4	This exhibit is more appropriate for a telephone company to do in an ADA check up. It is not a housing provider's responsibility to evaluate a public relay service. We recommended this exhibit be removed.

Need for Additional Exhibit: There are so many do's and don'ts in this Chapter, complicated by the overlapping laws, that even an informed person is confused by the end of the chapter. An additional Exhibit that sums up the do's and don'ts with references to the appropriate act/law would be highly desirable.

Chapter 3

Ambiguity, Waivers, and the Problem of Decision Adversity

In reviewing this chapter, a good opportunity presents itself to call the Department's attention to a real and persistent problem that has gotten worse in recent years.

The problem has three elements:

- ♦ Lack of Clarity in written guidance.
- ♦ Lack of Clarity about who within HUD, at the Field, HUB or Headquarters level makes decisions, and whether those decisions are binding or final.
- ♦ The inability to get any decision made on anything like a timely basis, which we define as ten working days in most cases.

Let us take Section 3.7 E as an example:

The section provides that owners must make a specific submission to the HUD Field Office to obtain an exception to the requirement of housing only very low income families. Neither in the handbook, nor in the attachment which provides the particular documentation required, does it provide more specific instructions as to who in the Field Office would be the appropriate recipient of this application. (E.1)

It then states that the Field Office will make the final decision. (E.1.a.). It does not say at what level the decision will be made, whether the owner has any rights to communicate/meet with officials other than through the submission of the documentation found at Exhibit 3-1. It does not state whether there are any appeals permitted at the field office level, from, as an example, the servicer to the housing director, or whether field counsel would play a role.

The finality of the Field Office decision is contradicted on the same page (E.1.c.), where it is stated that "if HUD determines that any criteria for any permitted exception has not been met", it will send a letter to the owner "specifying the reasons for its decision" and telling the owner that an appeal to the Multifamily HUB Director "may be considered" if "additional documentation is provided. In addition to the overall confusion caused by the juxtaposition of these provisions, this paragraph is ambiguous enough to raise a number of questions:

1. If the Field Office believes that all of the "criteria for any permitted exception" have in fact been met, can it still turn down the request?

2. If the Field Office can and does turn down the request even though all of the criteria have been met, does it still have to send a letter specifying a reason for its decision?

3. In the situations described in 1. and 2. above, does a letter still go out to the owner saying that an appeal is possible?

4. What does it mean to say that an appeal "may" be considered? Is it meant to say that an appeal "will" be considered, but only "may" be successful?

5. Why would an appeal only "be considered" if "additional documentation" were provided? This seems to be counterintuitive. If there was additional documentation, it would seem that the first place to present this documentation would be to the field office for reconsideration in light of additional documentation. The appeal should, one would think, be based on whether the decision of the field office was not the best one, not whether the field office made a decision based on incomplete information.

6. There is nothing said about the basis on which the appeal would be decided. Is it totally in the discretion of the HUB director, is there any deference paid to the field office determination, or is the decision to be made on more legalistic grounds?

7. The HUBs are being reorganized for the fifth time in just over seven years. If amendments were made to the 4350.3 each time a staff and decision maker realignment has occurred, the handbook revisions for that alone would have totaled four in the past five years. Will HUD have the ability to change the handbook provisions in a timely fashion when reorganizations occur, or should everything be written more generally (e.g., that the appeal would go to the official at the office, other than the field office, who has review authority over the decision maker?)

The section also provides for activity by a Contract Administrator (E.1.b.), but this too is unclear.
It states where HUD does not administer a contract, the Contract Administrator must "gather and submit all documentation with its recommendation to the HUD Field Office". But it does not provide for the submission of documentation to the Contract Administrator by the owner. It does not state whether, once having provided documentation to the Contract Administrator, the owner is able to communicate with the Field Office. It does not state whether the Contract Administrator's recommendation would be available to the owner for review or information, or whether the field office is in a position to overrule the Contract Administrator at will. Finally the role of Contract Administration Oversight Monitors is completely ignored in this treatment, and they are in fact the day to day supervisors of the contract administrators.

The business model HUD has indicated it wants to follow in recent years is to emulate the conventional apartment market, move decision making down the organization and regulate on a performance related basis. This chapter, and those that follow moves very far from that model. Indeed, the occurrences of "Must" far outnumber "May." The model being used here is overly proscriptive and will in practice be nearly impossible to administer in a cost effective way. Given that the department has capped rents at comparable unassisted levels, it follows that the regulatory model should be market oriented, inexpensive, and quick to act. As we mentioned earlier the ambiguous nature of the regulations here also cause genuine problems for the design and maintenance of the automated systems that support the regulations for assisted housing.

Specific Comments

Page	Part	Sub Part	Comment
3-1	3.1.A.		The use of the word "must" in the third introductory line is indicative of a major problem with the structure of the handbook–everything is black and white, must or cannot. This goes back to the question of

		statute, regulation, policy, etc. Still to be dealt with is the question of how to communicate an eligibility waiver on a cert sent to TRACS. As an example, the only method currently available is to alter the tenant's date of birth if age is the issue waived. This is not a satisfactory solution for all of the obvious reasons. A long time ago Gene Fogel said that emancipated minors could be admitted to 202s and 811s without a waiver as they were legally adults. Current language in this draft seems to reject this interpretation. Provide clear guidance on this issue.
3-2	Figure 3-1:	Add the following Key Terms to this Figure. They have Glossary definitions, and are introduced in the Chapter, but are not included in the Figure: - Chronically Mentally Ill - Developmentally Disabled - Disabled Household - Foster Children - Foster Adults - Head of Household - Non-Elderly Disabled Family - Responsible Entity After "Person with a disability" add: "(as defined for program eligibility purposes)". The Glossary has two definitions for this term and the reader should be directed to the appropriate one. "Remaining member of a tenant family" is listed here as a Key Term, but there is no definition in the Glossary.
3-3	3.6	There are multiple building properties where different buildings are subject to different Income Limits. What guidance can you provide on how to handle the handful of cases subject to this issue? Years ago, oral guidance from HUD was that it was acceptable to use the higher income limit table for the entire property as this would benefit tenants most. If this is not correct, then say what the expectations are so that software developers can comply.
3-4	3.6	Reversed *Must* and *May*, from current practice. Chapter flip flops throughout.
3-7	E 3 a 3	We find the suggestion that field office counsel do addenda interesting; our present experience is that they won't even approve fully drafted documents submitted to them. This is a Catch 22. Given that a live in aide is a tenant by suffrage, in many jurisdictions you can't even initiate an eviction for them alone.

3-8	3.6 E.4.c.	How are these individuals to be communicated to TRACS in terms of the 50059 data requirements? It appears from fields C6 and C7 in appendix G that the sex and date of birth fields are to be left blank. Is this the case? Also fields C6 and C7 mention children in the process of adoption. Should they be included in any income limit determination?
3-8	3.6.E.4.d, e , f:	Final line of subparagraph 'f' reads: "The owner must include income received by these persons in calculating family income". Since this would also apply to subparagraphs d & e, the same language should also appear in those subparagraphs.
3-9	3.7.B.	If HUD is tracking the 25% low income limitation on a nationwide basis, and if owners of pre-81 HAP contract properties can take in any number of low-income tenants, what happens if HUD determines that the 25% limitation is being neared or exceeded?
	3.7.C	It should be made clear that only one of the three conditions needs to be met.
3-10	3.7.D 3	Standards a., b. and c. are written very tightly, and they presume that a new owner or manager taking over a property that can be as much as 30 years old will have nearly flawless records to back their request. All three of these standards should be change to a "preponderance of the available data" standard so as not to lock either HUD, the state or local agency, or the owner into a corner.
3-11	3.7 D 4	If there is no entitlement to an exception with regard to admissions, what are the standards HUD is to apply? They are not stated; presumably, the field offices are left without guidance.
3-12	3.7 E	See our analysis at the chapter heading.
3-12	3.8 A	With regard to over income section 8 resident admissions, it states that "waivers" must be obtained. A "waiver" is apparently something different from a "granting" of an exception, as described in section 3.7, or is it? Under the HUD Reform Act, waivers of regulations and handbooks are subjected to specific procedures. It is unclear if this is the case here, because it is uncertain what, if anything, is being "waived". This needs to be clarified, so that the use of the term "waiver" is limited to those situations where the term is appropriate. In 3.8.B, dealing with BMIR units, the term used is "consent", and in 3.8.C., dealing with Section 236 et al, the term is "approval".
	3.8 C 1	The reference should be to no **qualified** income-eligible applicants. In 3.8.C.2.a., the owner is instructed to admit all "eligible" applicants

		[i.e., it does not refer to income-eligible], unless there is "good cause" for denying assistance. Is this meant to set up a standard more restrictive than an owner's normal tenant selection criteria? Presumably not, but it is unclear. In the example at the top of page 3-13, the Shady Grove example should state that HUD could grant an exception.
3-13	3.8 D	In D.1, it should be made clear that prior authorization is needed. The requirement that the proposal for authorization include a "detailed description of the criminal activities" and their effect on tenant safety is a two-edged sword. We have seen how similar requirements in the context of anti-drug activity grants has been turned against an owner and used as proof of bad management, even in the context of affirmative litigation brought by the government against an owner for the abatement of a nuisance. We think that any requirement that causes an owner to provide what are in effect admissions against interest as a sine qua non of receiving assistance needs to be looked at very closely. We think that there are other ways that could be used, such as a simple certification that there has been some criminal activity noted, that the police in place would help, and that the owner is doing all it can to cooperate with local authorities, etc.
3-13	3.8 D 3 d	We are not sure what "length of residency" means, or why that is important. We are also not sure how an owner is to calculate its "maintenance costs" for the particular unit as set forth in 3.f. without more guidance. We think that HUD should have model lease language for the termination of tenancy as stated in 3.g, and that it should also be clear that local landlord-tenant rules would need to be met. It is long established policy at HUD that having Police residing in a property is a good thing; making that process bureaucratically difficult runs counter to stated policy, and actively discourages owners and managers from even considering the option.
3-14	3.8 D 4	This is the first instance where Contract Administrators rise Phoenix-like from the Handbook. This is another overall failing of the draft–there is not sufficient thought being given to what HUD does and what the Contract Administrators do. This should be made clear to HUD, the CA's (both Traditional and PBCA's), and to the reader. We think that the use of the term Contract Administrator to cover both types of administrator makes for confusion.
3-11	3.7 D 4.	Need better clarity as to which exceptions apply and which do not.
3-13	3.8 D.	The Specifications for TRACS 201B (MAT 10, Sec. 2, Field 69) require that the TTP for Police/Security be at least 50% of Contract

		Rent. This is not mentioned in this section at all. We have also checked Chapter 5 and find no mention of it there. It is, however, included in the 50059 data requirements at Appendix G, Field 65.
3-14	3.8.D.3.d:	What is meant by "length of residency"?
	3.9.B:	Refers the reader to Sec 3, paragraph 3.28; however, that paragraph just refers the reader on to Appendix C. So, this paragraph should also refer to Appendix C rather than Sec 3, paragraph 3.28. Why make the reader look something up twice?
3-15	3.10 A	Change May for Must in line 1.
3-18	3.12 B 4	In light of recent events, determining citizenship is more important than ever. The Department should publish examples of requirements for additional proof of citizenship to guide owners.
	3.12 B 5.	Stop at prorated assistance. The deferral period was set by the rule published in the Federal Register on 5-12-1999, which set an 18 month transition period. That period is passed. The sections on deferred assistance should be struck. See also 3-23 K 2 b. Again, the period for deferrals is past.
3-19	3.12 E 2.	This appears to be a change from the final rule of 5-12-99 to require owners to verify eligible status annually. We are unaware of any rule making on this provision
3-19	3.12 E 4.	This provision does not follow logically from the other requirements of section 214; it suggests a violation of all processes related to verification and move in.
3-21	3.12 I 1 b.	The grandfathering period under section 214 has expired. This section should be struck.
3-23	3.12 K 2 a	The example and paragraph 2 a. are wrong, and contradict the policies set forth. This area is more complex than it initially appears. A number of our members who have reviewed this example who are expert in section 214 matters come to different conclusions. It appears that a deferral could result; whether that deferral is justified is unclear. In the 5-12-99 final rule, HUD noted that it could not think of a reason for a deferral, to re- approach that issue now is confusing at best. While this area is admittedly complex, given the rarity of these complex qualifications, better exposition of this rule is needed so that a manager confronted with this situation will make the correct decisions initially.

3-25	3.12.M.1	The last line refers the reader to "Chapter 4". A direction to the actual paragraph number would be more helpful to the reader.
3-25	3.12.M.2.b:	States that the family has 14 days to request a hearing with the owner. 24 CFR 5.514 states 30 days. This should be corrected.
3-25	3.12.M.2.b	On what grounds could an owner hearing result in granting eligibility following the INS appeal?
3-27	Second Example (with utility allowance):	The bottom line should actually read new family "TTP" (not rent). Since this is for Prorated Rent "with utility allowance", the example should be carried one step further to deduct the Utility allowance and arrive at the New Family Rent.
3-28	Example:	The numerator should read "Number of ineligible (not eligible) family members".
3-29	3.12 Q.	We are now more than 5 years beyond the effective date of Section 214. The temporary deferral of assistance as written is so complex that a typical manager will find the provisions impossible to implement. There are substantial added provisions beyond the rule, in sub paragraphs b. 1 and b. 2.
3-32	3.15	This section is confusing because it speaks of only 202 and 811 elderly programs, not the balance of the HUD elderly programs. The example should be more direct in explaining the difference.
3-38	3.18 B	The heading for the paragraph says that it deals with Section 8 and/or Rent Supp. However the text immediately below says that the paragraph covers only Section 8. Which statement is correct?
3-40	3.18.C.3.b:	The reference to "a disabled person for eligibility purposes" should be changed to "A Person With Disabilities". There is no description in either Figure 3-6 or the Glossary for a "disabled person". It would also be helpful to actually reference the definition: Figure 3-6 Definition E.
3-45	3.19.B.2 & D.2	The term "housing quality standards" should be changed to reflect the new language: "physical condition standards". HQS is now used only in voucher programs.
3-47	3.20 F 3 and 4	Are internally contradictory. Must/may problem.
	3.20 F 5	The family may choose.

3-48	3.20 G, H	If you Overhouse/underhouse, it must be done in accord with TRACS rules. Do these processes work with TRACS in all cases?
3-48	3.20 F 6 e	This section does not comport to 6-16, and also contravenes one strike policy adopted by the Department last year. The section should be struck in whole, and reference the one strike language indicating that the owner will set standards for exclusions. There is a life time exclusion for Sex Offenders of any age, and a three year ban for drug charges/convictions.
3-50	3.20 I.2.	Current language: "If a family refuses to move to the correct size unit, the family may stay in the current unit and pay the market rate carrying charge. The owner....may evict the family if it fails to pay the market rate carrying charge...." This subparagraph comes after 3.20 I.1.b. that addresses subsidized housing cooperatives. If 3.20 I.2 is also about housing cooperatives it should be identified as such, since "market rate carrying charge" is not in the Glossary and the appropriate term in subsidized rental housing is "market rent."
3-52	3.25	There should be a discussion in this section on Section 42 and bond financed regulations as to unit sizing and assignment.
3-52	3.24	This entire section seems to leave it up to owner whether verification of family composition is necessary. Whereas, birth certificates have always been a requirement in the past (Missing birth certificates have even been findings in CA management reviews), Paragraph C reads: "Owners are not required to, but may verify membership…..". Paragraph D goes on to state: "If an owner determines it necessary to verify family composition…". Is this a change in position?
3-57:	NOTE	About mid-way down the page references "Situation 7", which doesn't exist in the Exhibit.
3-61	Heading "Financial and Vacancy…":	Refers to "Situation 7a". Again, there is no Situation 7 in the Exhibit.
3-85	A 2 & 3	Both instructions tell the reader to refer to a Field in the 50059 Data Requirements (Fields 60 and 63). However, when the reader refers to those fields, there is an exception for mixed families. The exception refers the reader back to Chapter 3, Exhibits 3-17, 3-18 and 3-19 for instructions. There are no Exhibits 3-17, 3-18 or 3-19 in Chapter 3. Either the instructions in this Exhibit need to be changed, or the 50059 Data Requirements (Appendix G) need to be changed. Paragraph 6: Language needs to be changed to: "Multiply the amount in line 3 (the assistance payment the family would receive (not

pay)…"

3-86	C.7:	Language should read: "Enter the gross rent from Field 55 (not 44), Gross (not Market) Rent of the…".
3-87	Paragraph A2	The instructions refer the reader to Field 61 of the 50059 Data Requirements. However, when the reader refers to Field 61, there is an exception for mixed families. The exception refers the reader back to Chapter 3, Exhibits 3-17, 3-18 and 3-19 for instructions. Either the instructions in this Exhibit need to be changed, or the 50059 Data Requirements (Appendix G) need to be changed.
3-88	Paragraph B6	Delete the first reference to "line 5" in the third line of the paragraph.
3-89	Paragraph C 8 & 9:	Both instructions tell the reader to refer to a Field in the 50059 Data Requirements (Fields 60 and 63 However, when the reader refers to those fields, there is an exception for mixed families. The exception refers the reader back to Chapter 3, Exhibits 3-17, 3-18 and 3-19 for instructions. There are no Exhibits 3-17, 3-18 or 3-19 in Chapter 3. Either the instructions in this Exhibit need to be changed, or the 50059 Data Requirements (Appendix G) need to be changed.

Chapter 3 additional comments: The INS Form G-845S is introduced in this Chapter, and there are many references to it. However, a sample form is not included until Chapter 4 in Exhibit 4-3. Since all other citizenship forms are included in the Chapter 3 exhibits, it would make sense to include the G-845S in the Chapter 3 exhibits as well.

Chapter 4

An overall observation, after reviewing this chapter it appears to us that many practices are very prescriptive. If the Department does not have a specific process in mind on issues, this handbook should be clear about that, so the items within our discretion are clearly set forth.

On the matter of Application Fees
At several locations, but notably on page 4-20, section 4.7, the handbook reiterates that owners may not charge application fees. NAHMA is of the view that this standard needs to be changed. We feel the change is justified for two major reasons:.

- With the adoption of the market based standard for setting rents, HUD has explicitly tied rents to the conventional market, where it is also a standard practice to charge application fees. Fees ranging from $100 to $400 are not uncommon. It is illogical to assume that assisted properties can absorb all the costs associated with screening applicants within rents that do not include those costs; and

- With the adoption of the "One Strike" rule last May, HUD has raised the bar on background checking to a level much greater than is the case in most conventional apartments. NAHMA supports the "One Strike" rule, and its goals. The costs associated with the rule are not trivial. As the rule is being more fully implemented, owners are discovering that the costs are considerable, and in many cases are putting the property under considerable fiscal pressure.

In our view, HUD can't have it both ways. If you are going to cap rents at market levels, you should also be prepared to allow standard fees as they exist in the market. If not, the Department should be prepared to fund the costs of meeting the rule that has been set. As things presently stand, "One Strike" is an unfunded mandate; that is not fair. The publication of a revised Handbook is an ideal time to change the policy.

Specific Comments

Page	Part	Sub Part	Comment
4-2	Fig. 4-1		Add the following Key Terms to this Figure. They have Glossary definitions, and are introduced in the Chapter, but are not included in the Figure: · Currently engaging in· Drug related criminal activity · Federally Assisted Housing · Law Enforcement Agency · Violent Criminal Activity
4-3	4.4	A	Income limits are separate, they change, and should be separate. Remove them from Figure 4.2.
4-5 & 4-6	4.4	C	Required Contents of the Tenant Selection Plan: We can see where

			the amount of detail HUD is including in this Section will change the way a great many owner/managers provide information to applicants. It is now common practice for many owner/managers to actually give the applicant a copy of the Tenant Selection Plan with an application package. That is feasible when the Plan is 2 to 3 pages. To incorporate the amount of detail required in these pages will result in the plan being posted in the office and only given out when requested, as HUD suggests on Page 7, Paragraph 4.4.F. Question: How many applicants do you believe will actually ask for a copy of the Tenant Plan? If an owner/manager still chooses to distribute the plan with each application, s/he will be faced with high printing costs each time one of the following changes is required. Even if s/he chooses not to distribute the Plan to applicants, there will still be high mailing costs to inform those applicants on the waiting list of the changes.
4-5	4.4	C.1.b	It should be enough to simply state the citizenship requirements. Details are already described in the Owners Notice No. 1, which is given to each applicant. To describe the circumstances the owner will permit temporary deferral of termination of assistance is inappropriate, as temporary deferral only applies to those in-place tenants on June 19, 1995. It will never apply to applicants.
4-5	4.4	C.2	If the income schedule becomes a required part of the Tenant Selection Plan, changes will be required annually. The changes will translate into high mailing costs and possibly high printing costs. A requirement to post the income limits is more appropriate.
4-5	4.4	C.3.c	Page 4-45 of the handbook suggests that the methodology used for income targeting be monitored quarterly and adjusted if necessary. Adjustments to the methodology can become very necessary at mid-year. A requirement to spell out the methodology in the Tenant Selection Plan will again result in high printing and mailing costs. (Note this requirement is reiterated again in paragraphs 4.6.A and 4.25.C.) *NAHMA is concerned that the rigid policy set out here will make firm wide policies very difficult to establish. We see nothing in the statute or regulations to suggest that this level of disclosure in tenant selection plans is useful, or indeed appropriate.*
4-6	4.4	C.6	Should "A need for accessibility features of another unit" be added to this list?
4-7	4.4	C.9	Clarification is needed. This is overly broad, how do you determine what the change is to go to?

4-7	4.5	The general issue of changing preferences and eligibility attributes of households is not dealt with here--nor was it in the prior handbook. The issue with preferences is as follows: An applicant (X) applies on 1/1/2002 and has no preferences. The household is subordinate to all applicants with a preference. One year later the household qualifies for a preference. The only current applicants with a preference applied after X. Should X move to the top of the waiting list based on time of application, or should X have a new application date/time? Given that an applicant could both acquire and lose preferences while on the waiting list, the simple thing is to retain the original date/time stamp. The issue with eligibility is more complex and may argue for a different treatment. X applies on 1/1/2002 for an elderly property with units for the mobility impaired. X is 61 years old and, therefore, does not qualify for a unit for the elderly--only for mobility impaired slots. On 1/1/2003 X turns 62 and is now eligible for the elderly units. Should the application date/ time for the elderly unit waiting list be the date that X turned 62? If not, X would jump ahead of previously eligible elderly households who originally applied after X. In the extreme case, X could apply 10 or more years before his 62nd birthday and then jump to the top of the elderly list on his 62nd birthday. Related to these questions is that of whether an applicant may be placed on a list for which they are not eligible--i.e. an over income household or whatever--on the theory that their eligibility status may change over time, or HUD may grant a waiver if the property is having trouble with attracting applicants. The basic question, then, is whether the application date/time is related in any way to the date of first eligibility for a list.
4-7	4.5	Another issue not mentioned explicitly is that of weighting and ranking of preferences within a preference category (owner defined; regulatory; state & local law). In the past it was left to the owner to define how people within a preference category were ranked (so long as the method was part of the selection plan). Someone with 3 preferences could be given priority over those with fewer than 3 preferences, for example.
4-8	Fig. 4-3	The figure would be clearer if a column were added to the right of Regulatory Preferences for State & Local preferences. This helps to clarify the hierarchy of preferences. Shouldn't there be a check mark in each of the boxes for State & Local and Owner Adopted preferences? Also the check mark for Section 8 under Owner

			Adopted is simply a permitted preference--not a requirement as the title of the figure implies.
4-9	4.5	B.	Change the last sentence in the first paragraph to, "The following are types of preferences in hierarchical order."
4-9	4.5	B.1	Are waiting lists for Section 8 units in a BMIR property required to use the preference for displacees? Or does this preference apply only to the BMIR units? A similar question applies to 4.5. B.2.a & b.
4-9	4.5	B.2.b.	This advice on including adult members on active duty conflicts with Paragraph 3.20 F.6.e on family size. Does this imply that a member would be part of a household for waiting list purposes but then have to be dropped from the household on actual admission to the property?
4-9	4.5.	B.2.c.	As above, do the RAP preferences apply to the 236 units or only to the RAP units? Would the RAP units include the displacee preference as a higher order preference?
4-9			Including a full example for RAP seems excessive and confusing given that RAP is now a program with virtually no properties. A more useful and generally applicable example is needed.
4-10	4.5	B.3	Once again, HUD is stating that its field offices have the right to determine if state law applies. This is not correct, and dangerous.
4-11	4.5	C.1.e	We had never focused on a residency preference being required to include those working, as well as living, in the jurisdiction. If this is new, it should be questioned. The handbook says that preferences for working families cannot be used to exclude families “unable to work”. There is no guidance on how to determine who falls within this definition. We are not sure how one can determine to provide a preference for “the elderly” without running afoul of fair housing requirements, except in those units where fair housing and/or HUD requirements are being met.
4-12	4.5	D.3.b	There is no mention in Definition D of an age range. Should the range here be 18-61? 18-49 makes no sense. If 18-49 is intentional, what is the status of the near elderly disabled? Remove the words “and 18 to 49 years of age”. They are not included in the Definition at Figure 3-6, nor are they included in the definition at 24 CFR 5.403. Fix Fig. 3-6 Definition D, or change the reference.

			Add a definition of "near elderly."
4-13			Again, it makes it appear that all owners with elderly properties need to obtain a new OK from HUD before implementing an elderly preference.
4-15	4.6		In reviewing the example, we are confused.
4-15, 16	4.6	B	It is worth mentioning here that the first applicant on the waiting list may be a current resident waiting for a subsidized slot in, for example, a 236/8 property. Both move-ins and the first initial cert done for a household count for calculating targeting percentages.
4-16	4.6	B.1	The next applicant after the first extremely low applicant may also be extremely low. Do you intend to say that you would alternate between extremely low and non-extremely low applicants? If so, modify Method 1 in Figure 4-5.
4-17	4.7	A.2.	Current language: "Screening is a determination that an otherwise eligible household has the ability to pay rent on time and to meet the requirements of tenancy. The purpose of screening is to determine whether the applicant will be able to meet the requirements of the lease." Suggested Revision: "Screening is a determination that an otherwise eligible household has the ability *and history* to pay rent on time and to meet the requirements of *the lease*." Delete the last sentence – it is redundant.
4-17	4.7	B.2	With regard to alcohol abusers, the standard used here tends to confuse. The standard with regard to alcohol needs to address quiet enjoyment issues. Alcohol use per se is not an issue.
4-17	4.7	C.1	Paragraphs 1 and the initial part of 2 need to be clarified. They confuse the reader. Sub paragraphs a-d later clarify the standard. The paragraphs need to be rewritten.
4-18	4.7	C.2.a	The last sentence in a should be modified to "there are two exceptions to this provision that the owner may consider"
4-18	4.7	C.2.b.	The Department needs to add exposition on what constitutes "reasonable cause." The term has always been nebulous, and this needs to be defined and included in the glossary. Similarly, what constitutes "sufficient evidence?" Again, the Department has never opined on what meets this standard.
4-18	4.7	C.4.a.	Should such members not be allowed to visit the unit, given the

			recent Supreme Court 1-strike ruling?
4-19	4.7	C.4.d	In line 3, either a word or words is missing after "to" or the word "to" needs to be deleted.
4-20	4.7	D.2.a	Current language: "Owners may not charge application fees or require applicants to reimburse them for the cost of screening… Screening costs may be charged to the property operating account." Will guidance and approval of a rent increase for these fees rest with the local HUD office?
4-21			We do not understand the advice regarding screening related to turnover rate. For HUD to suggest that properties with vacancy problems should relax the ir screening criteria is simply an invitation to another form of disaster; sometimes, patience is a virtue.
4-22	4.7	E.2.a	"A requirement for applicants to have a perfect credit rating is generally too strict a standard." Comment: This sentence needs to be removed. If the property can remain full with this type off screening criteria, it should be allowed. Some 236 properties do require high credit ratings.
4-23	4.7	F.1.b	We are not certain what the basis is for the statement that owners cannot discriminate against "particular socio-economic classes". There are protected groups, and non-protected groups. All occupancy to subsidized housing discriminates against some classes. And what is the definition of a socio-economic class, anyway?
4-23	4.7	F.2.b	"Owners may not require pregnant women to undergo medical testing to determine a child's sex in order to assign a unit with the appropriate number of bedrooms." Comment: This paragraph should be removed. The paragraph is giving an example of prohibited screening criteria that would require physical examinations. It assumes the sex of a child is relevant in determining bedroom size. It is illegal to assign unit size based on sex of the child regardless of a physical examination.
4-23	4.7	F.5·	Current language: "However, in accordance with paragraph 4.28, owners may determine whether an applicant is qualified for an accessible unit." Suggested revision: "However, in accordance with paragraph*s 4.28 and 4.29,* owners may *identify applicant needs for features of*

			accessible units or reasonable accommodations."
4-24	4.8	B.	This section is related to the earlier request for clarification of application dates on specific waiting lists. The owner clearly has authority to put everyone on waiting lists, even if they are not eligible.
4-24,25	4.8	B.1- B.6	Current language: "Conditions Under Which Owners May Reject Applicants" Some of the items listed in this section are circumstances under which an owner may reject applicants, such as B.4 and B.5. Others are situations under which owners must reject applicants, such as B.1, B.2, B.3 and B.6. Therefore, this entire section needs clarification, or items B.1, 2, 3 and 6 need to be under a different classification with a heading stating owners must reject, and the others can remain "may." In addition, not all of these items deal with rejecting applicants; and Item B.5 implies that the owner must reject the entire household for not declaring citizenship or citizenship status, which is contrary to pages 4-53 and 4-54, Paragraph 4.30 B.1 and B.2.
4-25	4.8	B.8.a.	On smaller properties there may not be another staffer to handle.
4-27	4.11	C.1	Should this read "Owners must target their marketing and outreach activities to attract applicants with incomes at or below the extremely low-income limit."
4-29	4.11	E.2	"Owners must review their Affirmative Fair Housing Marketing Plan every five years and update as needed. . ." This is new. There is no such requirement in 24 CFR part 200 M. The AFHMP is created prior to the initial rent-up. It is updated when there are major changes in the property such as new construction, change in management or ownership, etc.
4-30	4.13	B	Should not the application contain other states in which the applicant has lived to comply with the one strike rule?
4-30	4.13	B.6	We are unaware of any regulatory or statutory requirement to include marketing information.
4-31	4.14	A.1	The first sentence is poorly drafted. The owner has the option of either placing a name on a waiting list without further processing, or processing and rejecting prior to placement on the waiting list.
4-31	4.14	B.	We are baffled by the cumbersome requirements regarding opening

			and closing waiting lists. We know of no basis for them, and believe they should be eliminated. Previous verbal guidance from the Department was that waiting lists could not be closed if preferences were being used because a new applicant could move directly to the top of the list under certain circumstances. Has that position changed?
4-32 and	4.14.B.1.c 4.14.B.2.a & b		We have searched all references to waiting list management and can find nothing in the 24 CFR that would require the owner to go to these extremes when closing and opening a waiting list. What is the authority for this cumbersome requirement? Does HUD realize the cost of such an ad?
4-32	4.14	C.1	Paragraph C (1) states that owners should make a preliminary eligibility determination before putting a household on the waiting list. HOWEVER,Paragraph 4.4 A 1 states, "upon receipt of an application for tenancy the owner must place the applicants name on the waiting list." There is a contradiction between these two paragraphs, as well as with Paragraph C (1) on Page 3-4.
4-33	4.14	D	Over the past eight years, HUD, Contract Administrators, and Owners have spent hundreds of millions of dollars for automation. The standards set out in this chapter requiring retention of manually prepared records, periodic printing of hard copy versions of lists, and retention of "originals" make no sense whatever. There are existing standards set in the e-government initiative for encoding, date stamping, and generally assuring document security so that an audit able electronic trail will exist. It is senseless to continue with obsolete systems when a standard could be set, and the next versions of our various software systems would have full electronic capability. The emphasis put on auditing of waiting lists suggests that there is widespread manipulation of waiting lists. Both NAHMA and most of the senior HUD executives we know are aware that assertion is simply unjustified in the great majority of cases. The emphasis put on noting date and time is unwarranted. Our reviewers who have considerable experience in site management are agreed that this level of queue management is unwarranted and will generate more debate than it solves. We would emphasize once more that these provisions fly in the face of outcome based regulation. This is heavily biased to process oriented, and in a great many cases is neither needed or necessary.

			Should this section state explicitly that an applicant may be on multiple lists (including for multiple unit sizes) and in different positions on each list?
4-33	4.14	D.4	With respect to excluded data, we believe the number of family members is relevant to income limits and unit sizing.
4-35	4.15	F	This sentence is poorly constructed. Pregnant singles may qualify for a two bedroom. Also see page 3-49 H 2.
4-36			*See our comment on page 4-33.*
4-36	4.16	A	What about income targeting? Presumably you could skip this household if you needed an extremely low person next and this household is only very low income. Clarification is necessary. If the family is over the 40% target, do you skip over the unit if there is not an accessible unit available?
4-36	4.16	C	This should be restricted to persons who need the features.
4-38	4.18	B.3	As in earlier comments, does the applicant retain the original date/time of application?
4-38	4.18	C	In this case of change of composition, HUD clearly comes down on the side of retention of the original application date. This implies that, if the new member would qualify the household for a new list (elderly or disabled) that they retain the original date. Is this what is intended?
4-42	4.23	C.1.a	This provision has proved to be generally unenforceable–particularly in jurisdictions that have liberal courts.
4-44	4.24	C.4.d.	Current language: "Documentation of disability must only confirm the existence of a disability and not the nature or extent of the disability." Suggested revision: "...and not the nature or extent of the disability *but may identify applicant needs for features of accessible units or reasonable accommodations. See paragraph 4.28."*
4-44	4.24	C.4.e	Current language: "Documentation of age is used to confirm that applicants claiming an elderly preference are 62 years of age or older. … If no other documentation can be provided, the owner may review a family Bible that shows birth records."

			Comment: Is the use of a family Bible as documentation of birth records a common practice in some parts of the U.S.? Suggested revision: "Documentation *or verification* of age is used to confirm, *for instance,* that applicants claiming an elderly preference are 62 years of age or older, *or to confirm that dependents are under the age of 18. … In the absence of the preceding forms of acceptable documentation, the owner may review a family Bible that shows birth records."*
4-45	4.25	D	Again, mention that both move-ins and the first initial certification count for record keeping and auditing purposes.
4-50	4.26	E.2	Since the majority of us will be using commercial services rather than PHA/HFA's, this section needs to be rewritten to support both methodologies. NAHMA and NLHA have submitted a brief detailing why we believe, based on the final rule, that criminal background checks are not required. The brief was submitted in November 2001; we have no response to date. The split opinion on this issue should be noted if no response is issued prior to publication of the handbook. A number of PHA's and HFA's have refused to process these checks. There should be support from HUD to require PHA's and HFA's to participate if requested.
4-52	4.28	A	However, could the applicant request that the unit be modified as an accommodation?
4-52	4.27	B	The last sentence in the Example implies that lacking a WRITTEN policy, you may never consider extenuating circumstances. Most owners do not have such a policy. By implication, HUD is therefore requiring that no exceptions be made for extenuating circumstances.
4-52	4.28	B&C	Current language: Paragraph B states "...Owners may not request information on the applicant's type of disability." Comment: The following paragraph C. contradicts this, as it reads, "Verify that the applicant is qualified to receive a priority on the waiting list available...to persons with a particular type of disability." Suggested revision: Change Paragraph 4.28 B. to read "...Owners may not request information on the applicant's type of disability *but may identify applicant needs for features of accessible units or reasonable accommodations."* Change Paragraph 4.28 C. to read *"*Verify that the applicant is qualified to receive a priority on the

			waiting list available…to persons with a particular type of disability or to persons *who need the features of an accessible unit or reasonable accommodations."*
4-54	4.30	B.2	The provisions here conflict with provisions on page 3-23 in the example. TRACS will kick back any full assistance request. Either the manual or TRACS needs to be modified to support the policy options offered. We believe Chapter 4 states the situation correctly.
4-54	4.30	C.3	This paragraph does not belong here. It relates to tenants in place, not applicants.
4-56	4.30	E.7.b.	How is this 50059 relevant in regard to an INS appeal? This changes the document retention standard for 50059's generally, and will cause problems. HUD needs to provide additional clarification on 3-year and 5-year records. Moreover, we can see no compelling reason to stretch the records retention period just because of an INS appeal. This adds complexity for no benefit.
4-59	Exhibit 4-1		The table column denoting sex is dangerous from a fair housing point of view. Having sex in the table allows discretion in unit assignment for regulatory purposes, but unnecessarily exposes a potential way for staff who wish to undermine company fair housing policies to do so. We recommend deleting the column.

CHAPTER 5

On the Privacy Act

The Privacy Act is referred to a number of times, and it would be helpful if there could be a concise explanation of its applicable provisions along with relevant citations. This is especially important since this handbook is often used as a training document for new staff, who can't be expected to come to the job with an understanding of the Act.

Specific Comments

Page	Part	Sub Part	Comment
5-1	5.1		It is unclear if the Department is referring to Section 42 property income certification rules or tax rules related to income for resident qualification. Greater clarity is needed, given that this handbook is used for both programs.
5-2	Fig.5-1		Add the Key Term "Head of Household", which has a Glossary definition, but is not included here. Add the Key Term 50059 Facsimile. This is not a Glossary definition, but there should be. The term "Project" is included as a Key term in this Figure, but there is no Glossary definition.
5-5	5.5B, Example		This would be a good place to give an example of correct rounding by using hourly rates like 7.53 and 8.11 or some such. You would calculate the two parts of the income to the penny, then add them, and finally round the total, since it is that total that appears in the 50059 data requirements.
5-5,5-6	5.6	A.3.c.	How does the owner indicate to TRACS that such a child is not a dependent? By leaving the sex and birth date field blank?
5-8	5.6	B.2	Introduces the new term "50059 facsimile". It is used throughout the handbook to refer to a paper copy of the 50059 data requirements. A Glossary definition would be appropriate.
5-8	5.6B, Example		The example appears to us to conflict in part with B.3.a above. The example must be rewritten to deal directly with active military duty and separately with combat pay, which is not necessarily restricted to "people exposed to fire." It is generally a theater determination, and is more complex. The whole example is confusing, and needs to be rewritten. We need two examples: active duty non combatant; and

			active duty combatant.
5-9	5.6	C.1.a	The choice is given to include income and receive allowable medical deductions; however, the reader should be advised that medical deductions are only available to elderly/disabled families.
5-9	5.6	E.3	Can we really force an applicant or resident to name the parent of a child? This information is not even required on a birth certificate.
5-10	5.6	F	Are there any limits on the nonrecurring amounts? If I give you $100,000 on a 1-time basis, would this not count as income but go straight into the asset category?
5-11	5.6	H	This section deals with adjustments for prior overpayment of benefits. It would be helpful to see special mention that agency garnishment of benefits for child support does not count in using the amount actually provided after the adjustment. Garnishments are addressed later in the chapter, but only in the context of wages – not agency benefits such as Social Security payments.
5-13	5.6	L	This section specifies a resident stipend of $200 per month as a base. We recommend that this amount be raised to $400 per month.
5-15	5.6.N, Examples		The Examples all suggest that monthly payments from an annuity should not be counted as income until the full amount of the original investment has been paid out. They are inconsistent with the instructions in Paragraph N; and they are a complete contradiction of Exhibit 5-1-No. 4 and 24 CFR 5.609, which include in income "The full amount of periodic amounts received from Social Security, annuities…and other similar types of periodic receipts".
5-16	5.6	O.2	The policy of counting lump sum distributions of any sort will cause significant later problems when the new RHIIP programs come into effect. Any transaction that will generate a 1098 or 1099 should be included so as to have income agree with standards for flagging for RHIIP.
5-17	Fig. 5-4		Option A – Shows TTP as zero when the family reports 0 income. Shouldn't TTP be a minimum of $25? The example is contradicted on page 5-60, para. D, which addresses Section 8 minimum rent (MIN TTP).
5-19	5.6	P	The example with the resident services stipend can be confusing as it is below the threshold. Clarity would be added to note the threshold amounts for less diligent readers.

5-20 through 5-24	5.7	B,C, E,& F.	Imputed income calculations do not apply to BMIR tenants (those receiving only BMIR subsidy). These paragraphs should note that fact where applicable.
5-20	5.7.C.1.a and and C.1.b.Examples.		There may be some confusion between the example in subparagraph C.1.a. and the one on the next page under subparagraph C.1.b. One is calculating the cash value of an asset, and the other is calculating the value of a non-cash asset. It is therefore suggested that the title in the example of C.1.b be changed to "Determining the Cash Value of a Non-Cash Asset Such as Real Estate"; and a third example of a non-cash asset should be included, such as a china collection.
5-20	5.7	C.1.a.3	This paragraph should also include mortgage payouts, tax stamps, and excise taxes related to the transaction.
5-22	5.7.D, Examples.		This is a poorly written example of jointly owned assets. There should be a bright line standard on jointly owned assets, which does not require us to divine the owners intent here.
5-23	5.7.E, Example.		The example does not use the rounding rule properly. The $12.50 should be $13.00.
5-26	5.7	G.1.b.4	Current language: "If a tenant sets up a nonrevocable trust…while residing in assisted housing…" Suggested revision: "If a tenant sets up a nonrevocable trust…while residing in assisted housing *or less than two years prior to move-in*…"
5-27	5.7	G.1.b.6	The example on the bottom of the page is very confusing, and requires substantial clarification.
5-29	5.7	G.2.b.2	The bullet point is wrong. The annuity is income. See 24 CFR 5.609.
5-33	5.7	G.5	The paragraph here assumes that the mortgage taken back is a straight amortizing loan. This paragraph should be expanded to include interest only notes, balloons, and partially amortizing loan types. In the case of those notes which are increasingly common for the transfer of assets to children, the income component will be much larger.

5-33	5.7	G.6	The first paragraph says that this provision does not apply to BMIR properties. The current handbook refers not to the property but to families receiving only BMIR assistance. Presumably a tenant receiving Section 8 in a BMIR property is subject to the discussion on divested assets. Various versions of the handbook have had a difficult time with this concept, and the current draft is no exception. The language in the first paragraph is not consistent with that in the sub-paragraphs and the examples. A few simple examples may serve to clarify. I buy an antique car for $30,000 and obtain 100% financing on it. Its fair market value is $30,000. Its cash value, per the handbook, is $0 (30,000 less the 30,000 owed on the loan). I give you the car. Clearly I have disposed of an asset for more than $1,000 less than its fair market value. However, if we consider cash value as in the examples, I have no asset to list on the certification. A more realistic example would be a $100,000 house with a mortgage of $90,000 and estimated broker's fees and closing costs of $9,000. The cash value is $1,000. If cash value is ever considered in the test of whether an asset was divested for less than fair market value, we quickly can end up with disparate treatment of similar transactions depending on whether or not financing was involved. Compare the house above with another one of identical value with no mortgage and the same closing costs. The cash value here is $91,000. If both owners sell their homes to their children for $10,000, should not the treatment on a certification be the same? We would propose the following: in determining whether a divested asset should be included on a certification consider only the difference between the gross sales price and the fair market value. If the difference is greater than $1,000, then the asset should be listed on certifications for two years. The amount to be listed on the certification is the difference between FMV and gross sales price. If we use this proposal, then both houses would be listed on subsequent certifications at $90,000. Cash value is not relevant for divested assets. This proposal eliminates the possibility of sham transactions whereby someone borrows heavily against an asset just prior to giving it away, thereby avoiding having to carry it on certifications. The proposal also is extremely simple to understand and calculate. We only are concerned with cash value for current

assets–not divested ones.

5-34 5.7.G.6.c, Example.
The second example on page 5-34 is incorrect. The only way the owner could count the income on the $60,000 for 6 months would be to value the asset at $30,000 since the imputed income calculations are based on the passbook rate times the total value of the assets. The correct thing to do would be to do an interim in June.

5-35 5.7.G.6.g, Example
In Example 2 on page 5-35 "Automated" purchase should be "Automobile."

5-36 Section 2. It should be noted that Section 2 does not apply to BMIR tenants (those receiving only BMIR subsidy).

5-36 5.10. It is important to state that the deductions should be calculated in the order presented in the handbook. If this is not done, then it is possible for allowance calculations to differ depending on, say, whether the disability deduction is done before that for childcare supporting work.

5-37 5.10 B.1.f. For clarity we would say, "must not exceed the specific incomes earned by the family member made available for work." The expense should not be applied to the total earned income for the member. Only to the incomes actually enabled.

5-37 5.10 B.1.b. Determining whether an adult family member is capable of providing child care should be a management decision.

5-39 5.10 C.2 Was the language in the current handbook on Pages 3-49 and 3-50 omitted deliberately? (3-27.f(1) and (2))

5-45 5.10.D.10, Example
Since disability assistance exceeding the amount earned by a person enabled to work is really the more confusing calculation, it would make sense to also provide an example of that scenario.

5-46 5.10.E.1, Example
The example does not clarify this subsection. The example should be called, “The Reason Why Tenants Should Not Calculate Their Own Rent On Line.”

5-46 5.10.F, Example
This would be a good place to mention that garnishments from entitlement payments such as Social Security do not get deducted.

			Owners should use the full amount as if there were no reduction in payment.
5-49	5.13	C.1	There are additional reasons that may require an owner to review documents provided by the applicant/resident. Two in particular are on-going verification problems: ♦Many banks now charge the resident/applicant account for completing verification requests. When this is the policy of a bank, we are allowing the resident to provide the current savings statement or the prior six months' checking statements; and. ♦Some of the large employers have begun using a 900 phone number for employment verification. The cost of the call is charged to the property phone number and the cost can be as much as $9.00. A history of resident pay stubs is used for verification purposes when this form of verification is required.
5-49	5.13	C.1.b	The four-week wait before considering original documents from the tenant seems excessive. If an employer is going to respond to a request for verification, the response will come within a week. Our policy is to call at the week mark and either fax or mail again if necessary. This time period should be shortened to two weeks, as it could result in delays filling vacancies and completing recertifications. (Also see Page 5-56 Paragraph 5.19.E.4.)
5-51	5.15	C.2	Many Owners, Managers and Tenants will confuse this Fact Sheet, with the identically named Fact Sheets, issued February 5, 2002 as a notice by Commissioner Weicher. Clarification in the handbook, and/or renaming of the Weicher set of documents would be wise.
5-53	5.17	A	With the change in the recertification periods to 120 days, the 9887 and 988A's need to be changed in duration to 16 months. All verifications other than the 9887 and 9887A need to be changed to a duration period of 150 days to allow the new timing on recertification to work properly.
5-55	5.19	D.1	This is bordering on insane. We can only begin to imagine the number of times an on-site manager will have to make these ridiculous notations–particularly with the elderly resident that brings in a shoebox full of receipts for everything from Aspirin to Zantac. The better part of the day is spent at the copier unfolding, sorting and copying these receipts. If the suggested notations become a requirement, the remainder of the day will be spent writing 500 times: "I have reviewed the original document…." We can think of more productive ways a manager can spend what little time they have.

5-57	5.21.C, Example		It continues to be the case that DOD requires all military staff being deployed to sign both their last will and testament, and durable power of attorney to act to their designated dependent. In the second example, the wife could sign in the husband's absence.
5-57and 5-58	5.23	A,B,C	Owners should be able to keep electronic or micro format records.
5-61	5.26	D.3	The provisions on financial hardship determinations are quite vague, as is the process to be followed by HUD in determining that a hardship exists (and how HUD would become involved in that question).
5-61	5.26	D.3.b	Presumably the tenant pays the TTP calculated without the $25 minimum--not $0. Is this correct? If not, state explicitly that the TTP drops to 0.
5-63	5.27		Are the amounts to be paid as rent by police/security personnel discussed anywhere? Does the handbook say anywhere how those rents are calculated, and whether the tenants need to be program income qualified in any way?
5-68	5.29	A.2	The last sentence should read, "....110% of the BMIR rent."
5-69	5.30		There is mention of the low income housing tax credit program on page 5-69, and a further discussion of rent limitations on tax credit properties and their interface with HUD requirements. We think that the issue of the combination of tax credit and HUD requirements deserves a larger discussion than this (there are often questions which arise and appear to have been insufficiently addressed), and it should be somewhere else. Again, the largest number of HUD tax credit properties are most likely 221(d)(4) properties, which are not covered by this handbook at all.
5-70	5.30	D.	The process for amending a HAP Contract to change the unit size allocation should be more precise.
5-70	5.30	C.2	In various mark-to-market scenarios you can have situations where the Section 8 contract rent is not the same as the 236 Basic rent. How do such situations reconcile with the language here? If the Section 8 contract rent is greater than 236 Basic, the current language implies that you would terminate subsidy for someone paying less than contract rent. This violates the concept of contract rent.
5-71	5.31		This paragraph talks about determining rent when the Tax Credit

			program is combined with other programs. BUT there is no discussion of what income limits to use when there is a difference between the Tax Credit income limits and subsidy program income limits. ALSO, currently, when Tax Credits are combined with subsidized properties, the IRS allows residents to pay more than the maximum Tax Credit Rent as long as the owner is receiving at least $1 of subsidy/assistance. These residents, even though paying more than the maximum Tax Credit Rent, are not out of compliance as far as the IRS is concerned. Paragraph 5.31 significantly changes this interpretation and will prevent tenants from paying more than the maximum tax credit rent. This could significantly reduces the revenue flow on many properties. Example: Section 8 Gross Rent $800 Maximum Tax Credit Rent $300 TTP $500 In this example, under the current interpretation, the tenant would pay the $500 TTP and the owner would receive $300 of subsidy. The direction given in paragraph 5.31 would limit the TTP to $300, and it is unclear if the owner could still receive the $300 of subsidy. If the owner could, he would still be short $200.
5-72, 5-73	5.31	E	In paragraph E in general, language states that in some circumstances the tenant must either pay the higher rent or give up rental assistance. While this may be an option for the tenant, would not allowing this choice for the tenant cause the owner to violate tax credit rules if the tenant chose to pay the higher rent? Please clarify.
5-72	5.31	E.2	Current language: “At recertification, if the family’s…tenant rent increases to an amount than the Tax Credit rent…” Suggested revision: “At recertification, if the family’s…tenant rent increases to an amount *higher* than the Tax Credit rent…”
5-73	5.32	B.	We'll mention this again when we reach the 50059 data requirements. The question has to do with the last sentence, "...all of the data fields listed in the 50059 data requirements as well as the exact numbering of these fields." The issue has to do with the term "exact numbering." The order of fields in the data requirements is that from the TRACS MAT guide. The ordering in the MAT is not logical in any way, and is largely due to historical accident. If you want fields printed in numeric order, the report would not be logical. If you want

the report to be organized for ready human consumption, then adjacent fields will be labeled with non-adjacent numbers.

Fields are often added or deleted from the MAT. It is important to establish a clear principle now. If a field is added, should it be added at a logical place in the MAT and be given a logical field number, or should it be added at the end of the record type and potentially throw off the numbering for reporting purposes?

5-78 Exhibit 5-1(6)(b)(ii) Comment: This section needs clarification or a dollar example.

CHAPTER 6

Of course, Chapter 6, Lease Requirements and Leasing Activities, can only be properly read in conjunction with the model lease being put forward by HUD, and its absence creates quite a gap. As we mentioned above, we recommend that this handbook be issued with the lease sections of Chapter 6 reserved until the new leases can be reviewed with the stakeholders.

Nonetheless, the following can be said: the chapter is filled with legal conclusions that should not be stated as categorically as they are.

The first example is in 6.1.A, where it is stated that, to be enforceable, a lease must comply with federal, state and local requirements. This is not accurate. The most obvious example would be a lease which contained a provision contrary to state law. It may be that the particular provision would not be enforceable, but it would only in very rare instances negate the lease itself.

6.4.C. contains a strange provision which states that the model lese may only be changed for state or local laws, or for a "management practice used by a majority of management entities". We are not certain what this means, or why HUD's ability to approve a modification would be so limited. In fact, of course, it is not, which raises another general topic on more time. Anything in the handbook not regulatory or statutory can be waived. This would include a provision limited HUD's approval authority, such as here. The simple handbook waiver process is all that needs to be followed at the field office level. But this is not made clear throughout the handbook, leaving readers at a loss to understand the potential flexibility of handbook provisions. In the same paragraph, it is stated that HUD or the Contract Administrator can approve changes–bringing up the issues previously raised through the continued, but not all pervasive, references to contract administrators. It also does not say whether a refusal by a Contract Administrator to approve a change could be appealed to HUD and, if so, at what level. In fact, except in very rare instances, the concept of intra-HUD appeals is not mentioned. Nor is the concept that HUD officials can only do what they have been authorized to do through official delegation.

Further, as the chapter goes on, in 6.5,C.2, there is a further discussion of lease modifications, where HUD's ability to approve changes is drafted much more broadly. And, in 6.12.B.2, the handbook again says that either the contract administrator or HUD can authorize a modification, but in 6.12.C, it states that the request must be made to HUD, with no mention of the contract administrator.

The provision goes on to say that there can be no modifications for 202/811 PRAC project leases, presumably even to meet local requirements. We do not understand why this would be the case. There is no citation, of course.

In 6.4.D., there is another bizarre statement: If any provision of a model lease conflicts with state or local law, the owner must follow the rule that is of most benefit to the tenant. This statement is objectionable on any number of grounds, and we believe indicates a deliberate bias on the part of the authors of this section of the Handbook. The language, if published this way, will likely result in some resident advocates in jurisdictions with rent control asserting that rent

control applies. There is a well established principal of federal preemption in this area, but the provision could well open that debate again, to no one's benefit.

In Figure 6-2, where the various HUD model leases are matched with particular programs, there is a reference to model leases created by state agencies. This handbook is very inconsistent in describing properties with state housing finance agency loans.

Specific Comments

Page	Part	Sub Part	Comment
6-2	Fig 6-1		The term "Tenant Payment" is included as a Key term, but there is no glossary definition.
6-3	6.4	B	This and several other paragraphs refer to a new model lease, but such lease is not included for review and comment.
6-3	6.4	C	Changes in a model lease that are limited to "a management practice used by a majority of management entities" is too narrow. There are many cases that require an addendum unique to a site or geographic location. This would not be a practice used by a majority of managing entities, but it would be, nonetheless, a legitimate need for a modification or change to a model lease.
6-5	6.5	A.4.f	Is the live in aide document field office drafted addenda? If not, what is it?
6-6	6.5.	C.2	With respect to the NOTE, language about Section 8 contracts that terminate, also causing the lease to terminate, is a good idea to include in the lease and should be a permitted inclusion. However, this was mentioned no less than three times throughout the chapter, and may be disconcerting to owners and tenants alike. We would also mention that this issue has been quite a controversial topic in connection with certain opt-out situations, and needs to be addressed much more completely than this one note. For example, can an owner unilaterally modify a lease to contain this provision and tell the tenant to sign the modification or face eviction? What if the contract is terminated because of some misdeed of an owner; can the tenant then be evicted by the owner?
6-7	6.5	C.4	This provision mandates that language included in Section 202 leases for pets be included in Section 8 New Construction and State Agency leases. However, an approved Pet Lease and approved Pet Rules already exist. Such approved lease and rules do not require inclusion in a model lease but have the same effect. Why add the burden of

			inclusion in a lease when a viable alternative exists?
6-7	6.5	C.5	Will there be approved model language for the authorized police/security personnel occupancy?
6-7 and 6-8,	6.5	C.6.a through h.	The prohibited provisions in this section are so basic, it is difficult to believe that these actions have occurred. Is there a need for them here?
6-8	6.5	C.6.	NOTE. Clarification is needed on what a "wrongful removal" of a pet would be, and what kind of lease provision language would be prohibited.
6-9	6.6	A.	Current language: "Owners should recognize that lease terms and requirements vary across the different housing programs." Suggested revision/comment: "Owners *and tenants* should recognize…" Many tenants do not realize that lease terms and requirements vary across programs. In the next paragraph, owners are "advised" to notify their tenants if a HAP Contract is expiring in the next six months. In fact, this is a statutory requirement, and a topic on which the Section 8 renewal guide dwells quite heavily. This brings up the question of other HUD handbooks and directives. If you read this handbook, you would for the most part think that this was the only one; you would never know that this is one of a series of handbooks and other directives. There should be much more cross referencing.
6-9	6.6	B.	This paragraph poses another problem in saying that, where there is less than 12 months remaining in a section 8 contract, the lease term should only be for the remaining term of the contract. Many HAP contracts have less than 12 months to run at this point, and some are only 12 month contracts. Except where owners have provided 12 month notices that they are going to opt out, there will continue to be Section 8 at the property. As long as the lease recognizes that the extension has not yet been approved by HUD (if that is the case), there should be no problem in a 12 month lease. Otherwise, the policy would threaten to create vacancies where none are necessary, as tenant would most likely hesitate to rent a unit for, say, 60 days.
6-10	Figure 6-3		This figure showing initial and renewal terms for HUD subsidized programs is a very helpful visual.

6-11	Figure 6-4		In the second paragraph, the question is, are properties exempt by EPA standards or by HUD standards? This should be clarified.
6-13	6.8	D.1	Current language: "Owners must keep records of the Disclosure Form provided to each tenant." Comment: For how long?
6-14	6.9	A.1, A2	Encouraging a house rule provision whereby tenants treat each other with consideration is good to see, as is confirmation that HUD's approval of house rules is not required.
6-14	6.9	A.3	The handbook states that, "Owners must be careful not to develop restrictive rules that limit the freedom of tenants". This is in fact, exactly what house rules do. They should not be overly restrictive, one would assume, if the goals could be accomplished with more flexible rules.
6-15	Figure 6-5		We disagree that a broad no smoking rule would be unreasonable. There are substantial insurance implications involved with smoking in multifamily properties. It is our property, and tenants can choose whether they want to live there.
6-16	6.9	B.2.b.2 and 3	These additions to the handbook regarding extended absences and/or abandonment of a unit are good to see.
6-16	6.9	B.5	The owner should have the option of being able to appeal the Field Office's decision to a higher HUD office.
6-17	6.10	C.2	Both these sections dealing with pets are good additions for owners.
6-18	6.10	C.9	What if there are no applicable state or local laws?
6-18	6.10	D.1.d	The phrase "grounds for removal" is inconsistent with the earlier "wrongful removal of pet" prohibition, without some guidance as to what that is.
6-19	6.10	D.2.a.	This section allows the property owner to enter a tenant's premises after reasonable notice to investigate signed, written complaints regarding pets that may be a nuisance or threat. Additional clarification is needed here; i.e., is barking enough to warrant an investigation?
6-19	6.10	D.2.b.	Current language: "…allows the property owner to enter the premises to remove the pet that becomes vicious, displays symptoms of severe

			illness…" Comment: This language is very subjective and places a big onus on the owner.
6-19	6.10	E.2	We would think that there should be some way to deal with violent pets without going through all of steps outlined in 6.10.E.2.
6-19	6.10	E.2.c	Ten days is too long for an offending pet owner to correct or respond, especially where the pet is vicious, barking a lot, urinating in the halls, etc.
6-20	6.10	E.3.a.	Current language: "If the pet owner makes a timely request for a meeting…a property owner must establish a mutually agreeable time and place for the meeting." This language is too broad – many seniors will never find a time or place "agreeable." Such a meeting should be held in the office and during regular business hours, just as it would be for any other tenant.
6-20	6.10	E.5.a..2	If the pet rule is "sufficient" to begin termination, the question is, what is "sufficient"? There is need for more guidance here.
6-20	6.10	E.5.b.	There is still some concern regarding the timeframe that is "most beneficial to the pet owner…" The question remains, what if the pet is vicious, barking or urinating in the community areas of the property (halls, elevator, etc.)?
6-21	6.11	B.2.	The NOTE states, "The printout of the 50059 data requirements…serves as an addendum in identifying the change in rent." This is excellent!
6-21	6.12		The assumption is that a mandated lease change at the end of a lease term is effective if approved by the tenant, and that the tenant could be evicted if he does not approve the change. Perhaps this is the case in some jurisdictions, but certainly not in the District of Columbia and others where there is no concept of a lease term in subsidized, or perhaps in all residential, housing, barring a violation of the lease.
6-21	6.12	B.1	Current language: "A lease change provided by HUD may be incorporated into the lease without HUD approval. However, the tenant must be given notice as outlined in paragraph 6.12, Modifying the Lease." Suggested revision: "A lease change provided by HUD *is incorporated into the lease by giving the tenant written notice* as

			outlined in paragraph 6.12, Modifying the Lease."
6-22	6-12.	B.3	The paragraph states that the owner "may" take into account state and local requirements when modifying the lease; we do not see how they can be avoided. In an ideal world, HUD would have developed a model lease form for each state (as they have done with the mortgage form). We know that this will not happen in the near future.
6-22	6.12	B.7	Strike the second use of the word "procedures."
6-22	6.12	C.2	Comment: Field office and counsel should include the owner in a discussion regarding the proposed lease change or modification.
6-23	6.12.	C.3,C.4	A gap is still left concerning the scope of permitted lease modifications. There are those modifications that HUD (and, it says, "state agencies"; we are not sure how they got here) "may" approve, and those that they "must not" approve. What happens to those that do not fall in either category?
6-23	6.12	D	Notices, according to 6.12.D, are to be deemed received the day that a notice is dropped in the mail. This is obviously unusual and unfair, and unless made clear by the model lease, we would assume unenforceable.
6-25	6.15	E.3	Current language: "The amount of the security deposit to be collected is dependent upon…The amount of the tenant's rent." Suggested revision: "The amount of the security deposit to be collected is dependent upon…*One month's total tenant payment except for the Section 236 and Section 221(d)(3)BMIR programs.*"
6-26	Figure 6-6		This table showing the amount of security deposit to collect from the tenant under various programs is a good visual.
6-27	6.15	E.8	Current language: "An applicant may be rejected if he/she does not have sufficient funds to pay the deposit." Comment: We appreciate the clear statement.
6-27	6.15	E.6	This raises a question that is brought on by TRACS 201.B: the amount of security deposit paid on move-in is now transmitted in the MAT10 move-in record. If installments are taken, there is no record of additional amounts received. The handbook should address the correct way of transmitting the installment amounts collected: submit corrected MAT10 MI, or submit IR with addition to security deposit.

			Note: In markets with an average $100 deposit at conventional properties, it is not unusual to allow installments if the TTP is $200 or higher.
6-27	6.16		As to security deposits in 6.16, there should be provision for deductions from security deposits for damages.
6-27	6.17		In 6.17, in regard to potential conflicts in requirements regarding the handling of investment of security deposits, there is a suggestion that the owner consult an attorney. This is the first such reference that we saw in the book.
6-27	6.17	A	The paragraph here indicates a significant bias on the part of the Department. The manner and operation of preemption based solely on "tenant benefit" is one-sided, and will result in non-uniform operation and controversy. The final sentence charging owners with the responsibility to consult with counsel on "tenant benefit" is offensive and inappropriate on its face.
6-29	6.18	C	The language should be modified to read, "the later of the date of vacating the apartment or notification of forwarding address." With the current wording, it would be possible to have to return a deposit prior to move out.
6-30	6.18	D	Current language: "If a disagreement arises concerning the reimbursement of the security deposit to the tenant, the tenant has the right to present objections to the owner in an informal meeting."
to the			Suggested revision: "…the tenant has the right to present objections owner*/management agent* in an informal meeting."
6-30	Helpful		HintWhat special claim guidebook? There is no such document available at present.
6-32	6.23	B	Current language: "Owners may assess a charge if the tenant has been given at least 5 calendar days as a grace period to pay the rent."
			Has it always been that an owner cannot assess a late fee, unless there has been a 5- day grace period? This appears to be a change.
6-32	6.23	B	Current language: "On the sixth day, the owner may charge a fee, not to exceed $5 for the period of the first through fifth day that the rent is not paid."
			Suggested revision/comment: "…for the period of the first through

			fifth day that the rent *was* not paid. *For example, if rent is due on the 1st and not paid by the 5th, then on the 6th the owner may charge $XX.*" This clarifies which 5-day period is meant here. Current language: "…the owner may charge a fee of $1 per day for each additional day the rent remains unpaid for the month." Suggested revision: Add the phrase "*unless prohibited by state or local law*" to the end of the sentence.
6-32	6.23	E	We suggest adding the sentence, "*However, persistent late payment of rent constitutes a material noncompliance and is grounds for termination of tenancy.*" This provides a clarification for tenants, and would discourage continual late payment of rent.
6-33	6.25	A.2, A.3	These paragraphs are internally conflicting. We should be allowed to recover all bank fees irrespective of which occurrence caused the check to be dishonored. Requiring us to accept the first dishonored check with no charge or consequence encourages irresponsible resident behavior, and adds costs to the operation of the community.
6-34	6.25	E.	This requires HUD approval before an owner can require a tenant to pay "other charges". We assume this means charges other than contained in 6.25.A through D, but this is not clear that the word "other" is used to described A-D charges.
6-36	6.28	A.	The Owner should also be able to require the first month's rent in "guaranteed form."
6-36	6.27	C.4	This paragraph should be deleted. HUD does not require any tenant briefing. Giving a suggestion to conduct it some other time than lease signing is not appropriate. Practically, the lease orientation is done at move in. This is industry standard. Also, this suggestion could imply that the lease could be void because the tenant did not have time to "sleep on it" prior to signing.
6-36	6.28	A	Add first month's rent in guaranteed form.
6-36	6.28	B	Owners should not be obligated to accept personal checks.
6-49	Exhibit 6-6		This is an excellent visual on tenant briefing topics.; HOWEVER, at no point does Exhibit 6-6 note that illegal use of drugs, violence against other residents or staff, or engaging in criminal activity are prohibited. If we want drug and violence free communities, setting

the expectation is important.

Chapter 7

In reviewing this chapter, we were struck by the fact that the Tenant is not being held to a standard of performance. Just as there are standards, time limits, and sanctions for an owner or contract administrator not doing things in a correct or timely way, there should be time limits and sanctions for a tenant who is not responsive or timely. The tenant has an affirmative duty to cooperate in the recertification and interim certification processes. There should be a point at which the Tenant has costs associated with failure to act on a timely basis. Many of the changes contained in this chapter are a step in the right direction, but there is still no sanction for delay, and there is nearly always a cure for failure to act. It is possible for a tenant's inaction to cost an owner money which is not recoverable. Fairness is the key here. Either there are no economic sanctions for either party, or there are sanctions for both parties. The present arrangement is unfair to owners.

One problem facing owner/managers is that once the verification process is complete, the 50059 data entered in the computer and a Notice of Rent Adjustment sent to the tenant, it becomes a trying experience to get the resident signature on the final 50059 facsimile. Even the model lease only requires the resident to submit required information. It makes no mention of signing the final document. The new model lease and Rent Adjustment notices need to address this issue by stating that the recertification process is not complete until the resident has signed the 50059. Both the lease and the Rent Adjustment Notice should allow seven (7) days to respond, or have the rent raised to market rent on the recertification effective date. This should apply to both Annual and Interim Recertifications.

Another solution would be to take the approach of PHA's, who have the resident sign the certification at the time of recertification interview. The Rent Adjustment Notice allows them 10-days to appeal if they disagree with the final findings. Otherwise the new rent becomes effective on the Annual (or Interim) effective date, and no further action is needed by the resident – many of whom consider it an imposition to come to the office twice for the recertification process. We recommend adopting the PHA's standard.

Specific Comments

Page	Part	Sub Part	Comment
7-2	7.4 A.		A statement should be added stating that residents paying 30% on PRAC projects are subject to annual recertifications which could be over the operating rent. There is a statement in Paragraph 7.7 B.2.b.(7) where it is clarified, but putting it here would be helpful.
7-4	7.5 c		Add to Paragraph 4, "for coordination purposes, owners may request that the recertification anniversary date be the date of acquisition for a tax credit acquisition." In pp C add, "include but not limited to in re mass annual certification dates".

7-4 7.4 D. "When a change in family composition is reported at an annual recertification in Section 202/8 projects…" Does this mean that they do not have to report it when the change happens, or just at annual recertification?

Pages 7-8, 7-12, 7-14, 7-31 and 7-32 multiple paragraphs:

Throughout the chapter the tenant cut-off date is referred to as "the 50th day prior to the upcoming recertification anniversary date". We can see technicalities arising if 31 and 28-day months are involved. **Unless this provision is changed, the software vendors will have a near impossible task getting our software to do recertificatons to work reliably**. A better description would be: "The 10th of the month that is two months prior to the recertification anniversary date". It would also be appropriate to introduce another Figure similar to the following (include all 12 months):

Recertification Anniversary Date
Send First Reminder Notice
Send Second Reminder Notice
Send Third (Final) Reminder Notice
Tenant Cut-Off Date
January 1
September 1
October 1
November 1
November 10
February 1
October 1
November 1
December 1
December 10
March 1
November 1
December 1
January 1
January 10

7-12 7.8 C It is a broadly held principle that one party should not be penalized by the failure to act on the part of another party to a transaction. In this section, the owner will be directly penalized for the failure to act on the part of either the Tenant or a third party supplying information to the process. The process outlined here will penalize the owner for the failure to act on the part of a third party. That is neither appropriate or fair. Owners are held responsible for their actions as it should be. Likewise, tenants should be responsible for their actions, or the

		actions of parties working in their behalf.
7-12	Example 2	Second bullet: If the owner has sent out all notices in compliance with the requirements, notices would have been sent on 5/1, 6/1 and on or before 7/1 (not 6/1 and 6/11).
7-13	7.8 D.	As stated in 7-12, delays attributable to third parties should not result in a reduction of income to the owner. This section is wholly one sided. There is extensive language for extenuating circumstances for Tenants. Likewise, Owners should be protected from actions out of their control.
7-13	7.8 D.1.	While this is entitled "delays in processing due to owner or third party action", it does not address third party action. An owner sends off a third party verification for employment, and it isn't returned. A second request is sent, and again not returned. The owner then must try to verify employment through secondary verification, such as paycheck stubs. The entire section assumes that third parties act quickly, and respond. The reality is they act slowly, and often do not respond.
7-14	7.8 D 2	In reviewing this section there is effectively no disincentive for a Tenant to act in a untimely fashion. The language needs to be modified to allow that Tenants can be taken to market rent for failure to act by the cutoff date. Neither the government nor the owner should be require to subsidize an irresponsible tenant. Tenants should be accountable for their actions, including acting to provide information for their subsidy to be calculated correctly.
7-15.	7.8 D 3 d, f	These paragraphs may be in conflict. Paragraph d states that a tenant is to pay market rent if they come in on or after the effective date of the recert. The market rent is in place until they recertify income. However, paragraph f. states that an owner may not evict a tenant after the tenant reports for the interview and processing has begun. It is unclear what happens when a tenant goes to market, fails to pay market rent, is served with an eviction notice for non payment, and then comes in to the office. In the example on page 7-16, we think the tenant should be responsible for market rent for the period 9-1 through 10-19, and should only receive subsidy for the pro rata portion of the month from 10-20 onward. Are Tenants to be given what is in effect a bonus of two thirds of a month's subsidy for not doing what they are required to do on a timely basis?
7-15	7.8.D.3	When a MAT65 (Termination of Assistance) is submitted to TRACS, any certification following must be an Initial Certification (IC). The handbook should point out that once the assistance is terminated, the

		new certification is not an AR, but an IC.
7-16	7.8.D.3.f	It would be good to comment here that although the owner cannot evict for failure to recertify, the resident is still responsible for paying market rent for at least one month. Should they fail to pay the market rent (or make arrangements to pay), the owner is still obligated to evict for non-payment.
7-16	7.8 D.4	How does the owner tell TRACS of extenuating circumstances? Is it acceptable to transmit a certification with the tenant unable to sign flag set to true? You would want to do such a thing to avoid any automatic terminations that TRACS or a CA might otherwise apply.
7-18	7.10	In general, there needs to be a discussion in this section on split properties, particularly where there is a split property with Section 42 Tax credit units. The whole section needs to include direction on bond financed, tax credit, and mixed HUD insured programs.
7-18	7.10.A	There needs to be a time limit for reporting changes. The lease should expressly state, "If any of the following changes occur, the Tenant must advise the Landlord within (five days/two weeks/one month) of event. If Tenant does not advise the Landlord of these changes within (five days/two weeks/one month), any resulting rent increase will be implemented without providing a 30-day notice."
7-18	7.10 A.3.	Does "reported as unemployed" mean "had no earned income"?
7-18	7.10.A.4	Page 5-32 indicates that income must by increase by $120 per month, but this paragraph states $200. Since we don't have the model lease to refer to, it is hard to verify which is correct.
7-18.	7.10 B.1	The paragraph states that a decrease in income, which would trigger an interim recertification, would be a reduction in welfare. This is misleading because the Work Responsibility Act prohibits landlords from reducing rent when a tenant's welfare income is reduced because of welfare fraud. The treatment here is overly simplistic; better detail is needed.
7-18	7.10.C	What if the family member turning 18 has income? Should there not be an Interim processed?
7-22	7.14 -7.16	Unit Transfers. There is no mention of the effective date of any rent change for a unit transfer. The current handbook states the rent changes on the effective date of the transfer (presumably even when a utility allowance difference in the new unit will affect the tenant rent). An issue that has caused much discussion in the industry over the

		years has to do with the effective date of a change in rent when the unit transfer coincides with a change in family composition– particularly when a rent increase would be involved. Some argue for a UT cert changing the rent to the new unit rent on the date of the UT and for a subsequent interim cert dealing with the new composition. Others argue that, because this is a UT, any change in rent (even that due to a new member's income) is effective on the UT date. The extreme case here is a tenant who requests a larger unit because his girlfriend and 3 children are moving in the next day and the owner says, "Great. I have a vacant unit of the appropriate size." Please put us out of our misery and decide this question, so we, the CA's and the tenants all have a common rule.
7-22	7.12.B.3	This needs a timeline example. We are not sure if we understand whether the resident will actually be at market rent for a full month, or if the rent change is processed in accordance with Paragraph 7.13.D.1&2 below. If the assistance is actually terminated for a full month, then the following needs to be considered: When a resident is taken to market rent, this generally is an indication that assistance has been terminated and a MAT65 (Termination of Assistance) is sent to TRACS. Once a MAT65 has been sent to TRACS, an Initial Certification (IC) must subsequently be processed. Will this change the new Annual Effective Date as in Paragraph 7.8.D?
7-22	7.13.D.1&2	This does not take into account the termination of assistance established in Paragraph 7.12.B.3. If, for example, the owner discovers on January 5th that a resident has been working. The first 10-day notice is sent on January 5th, the second 10-day notice is sent on January 15th, and the tenant does not respond until February 1st. The verification finally reveals that the tenant has been employed since October 10th. The following would appear to be required: November 1 – IR – Rent Increase – retroactive with no 30-day notice; February 1 - MAT65-Termination of Assistance – because tenant did not respond to the two ten-day notices; and March 1 – IC – Assistance restored to amount of November 1 IR.
7-22	7.15 B	"Owners must not reduce…the assistance payment associated with the original unit until the family…has been given sufficient time (no less than 30 days) to move to the new unit." HUD is opening the door here to substantially increased costs for the Government. If this is put in place as written, the government will be paying its portion of the rent on one unit, and 80% of the rent on the other for a month through the vacancy claim. We want confirmation of this change in policy, and how this aspect of vacancy claims will work. In the conventional apartment sector, apartment transfers are typically limited to no more than 48 hours, why in assisted operations would you permit a month?

		How does this square with marketing efforts described in Chapter 9, Page 9-31, Paragraph 9.14 D.2.e.?
7-23-24	7.16	There needs to be a discussion of how these issues are handled in 236, 221-d(3) and BMIR Cooperatives.
7-25	7.17 B- 7.18 B	There is confusion in the industry concerning retroactive gross rent changes (including utility allowance changes) where such changes would cause a tenant's rent to increase. The question is what constitutes 30-day notice of an increase. Is it correct that, if tenant comment and posting periods are followed, that this constitutes appropriate notice of an increase?
7-34	Exhibit 7-6	This should truly be a notice of Rent Adjustment, and be sent for either increase or decrease. It should contain a paragraph stating that the process is not complete until the 50059 is signed, and, if not signed within 7 days, rent will be raised to market rent of $_____, effective the 1st of the next month. (See suggestion at beginning of Chapter 7 comments.)

Chapter 8

In general, this chapter treats termination of assistance and other enforcement measures as if they are easy and unchallengeable, which of course they are not.

Because of this, termination of assistance (which is mandatory in some instances) will hurt the owner more than the tenant if the tenant does not vacate, stops paying rent, and the owner has to go through a lengthy eviction process. We think that there would be better ways to address these issues than by effectively putting the financial risk and burden on the owner.

In 8.1.B, there is a reference to state and local "procedures"; there can be substantive, as well as procedural matters which must be addressed as a part of lease termination. With all due respect to the authors of this chapter, as you read it, it is clear that they have only a minimal understanding of the issues we face every time we go to court.

We are surprised that 8.6. does not provide for any appeal of a decision to terminate assistance. Clearly, the owner is operating at his peril in terminating assistance in many instances, and we would think the lack of appeal would make termination more subject to reversal, again to the financial loss of the project.

While the majority of the statements on lease termination relate to provisions of the lease itself, we are concerned about the references to "fraud" as a material type of noncompliance with the lease, and the listing of the actions to be taken by owners if they determine that there has been fraud. Fraud is very difficult to define, and very difficult to maintain in a court, where the law has developed a significant number of hurdles which must be overcome. For this reason, an allegation of fraud by an owner is potentially very troublesome. When fraud is an element of an owner's termination case, it is generally one of many, and typically not the one which the owner will rely on, other than to color the other provisions of the petition.

To say that the owner "must" file a civil recovery action based on fraudulent conduct is unwise. The owner would be financially better off by far, in most instances, paying back to HUD (if that is where it should go) the over subsidization resulting from fraud, rather than suing a low income person to collect amounts owed on the basis of an allegation of fraud. Further, while we appreciate the handbook attempting to define fraud and differentiate it from error, the common definitions of fraud and the legal definitions are often not the same. It has universally been the experience of the review committee that local Landlord Tenant Judges have widely varying views of HUD Handbook provisions, and in many jurisdictions even raising a handbook issue will result in a quick dismissal.

Specific Comments

Page	Part	Sub Part	Comment
8-1	8.1 C		Current language: "Owners are also advised that terminations for reasons other than those permitted by HUD (e.g., termination for purposes of retaliation) are prohibited." Suggested revision/comment: Delete the parenthetical phrase "(e.g., termination for purposes of retaliation) " It gives the impression that owners are considered to be ignorant of that fact. It also gives residents the idea that they can claim retaliation to stall an impending eviction. Most already know that, but it doesn't need to be encouraged through emphasis here.
8-3	8.5 D 3		In a 236/8 what rent would a Section 8 tenant pay? Section 8 market or 236 market?
8-4	8.5F		We need clarification on the responsibilities under program requirements. The reference is sufficiently vague that our expert members are not agreed on what this section means.
8-4	8.6		Current language: "To avoid the potential for discrimination, it is important for owners to ensure that the requirements and procedures described below are applied consistently to all tenants." This sentence should be deleted in its entirety. It implies that owners do not know to apply the rules consistently, and it encourages tenants to claim discrimination. When one person's assistance is terminated, owners do not tell the individual about other tenants whose assistance has been terminated, nor should they, for privacy reasons.
8-6	8.7 B 7		In 24 CFR Part 5.520 on Proration and deferral of assistance, we read these sections to mean that for any residents admitted after November 29, 1996, the family will not be eligible for a deferral. It would be very useful to have clarification on this aspect of the section 214 regulations.
8-8	8.9 B. 1		We assume that this section means that in the event of the failure to give a proper 30 day notice or skips with no notice, the tenant would be responsible for the full contract or market rent, as the case may be. In any other situation, the owner would be responsible for tenant actions in breach of lease, since the owner is not responsible for the breach, there is a clear duty on the tenants part to pay.
8-10	8.12 C.		Reminder . Current language: "Owners must not take action to terminate tenancy based on other factors(e.g., retaliatory

termination)." Delete the entire sentence. Again, it assumes that an owner would consider a retaliatory eviction. Such an eviction is not permitted by law, and owners are charged with knowing the laws. To actually use those words in a handbook/guidebook implies that owners are ignorant of the law.

8-11 8.13 A.1. The letter "a." should be added to the first item. 8-11, 8.13 A.2.b. Current language: "When evicting for fraud, the owner must simultaneously file a civil action against the tenant ". Change the word "must" to "may" or "is encouraged to". The "must" language discourages owners from evicting for fraud.

8-11 8.13 A 2 b. We have not found any citation or supporting law that provides us with standing to enter into a suit. Either provide a citation or delete the section.

8-12 Figure 8-3 There is a “level playing field issue” here. If an owner misunderstands or forgets rules, we are subject to 2530 sanctions and/or civil money penalties. The language here suggests that tenants walk away from any responsibility. Either the certification language required on the 50059 and other documents is valid, or it is not. This suggests that the certification is only an estimate. The second paragraph in the box suggests to us that deliberate misstatement, e.g. lying about income, is not a material breach of the lease, and never qualifies for termination. This undermines the Tenant Integrity Program that the Department is pursuing.

8-12 8.13 3. a and Example

To suggest that any of the cited “minor violations” are minor strains credulity of even the most liberal analyst. Under the standards set out here, the recent action in San Francisco where one tenant did not control his dogs that resulted in the death of another tenant would be considered minor. What if the unauthorized occupant is a fugitive or drug dealer? We have had instances where tenants whose utilities have been cut off have accidentally set fire to buildings through improper use of candles, or Coleman type stoves. HUD cannot have it both ways. The One-Strike language and court cases establish that we have a responsibility to be vigilant and strict. These paragraphs undermine stated policy, and make no sense whatsoever when the standard is maintaining a drug and violence free community.

8-13, 8.13 A.4.b. Note

Current language: "If the tenant pays all amounts due under the lease within the grace period, this is not material noncompliance, but rather a minor violation." Suggested revision: Add additional sentence for clarification, as follows: "Repeated minor violations constitute cause

		for eviction."
8-15	8.14 a 2 a	In the parenthetical phrase “resident” should be struck from staff. Criminal activity that threatens the safety of staff, resident or not, or any resident should be grounds for termination. We see no reason to have two classes of staff.
8-15	8.13 B.5.b,c	Sub B.5.b. allows the owner to rely on information not on the notice for eviction, that was previously unknown at the time the notice was sent. However, the "Note" in Sub B.5.c. takes away this right for Section 8 New Construction, Substantial Rehabilitation and State Agency properties, noting that "the owner must rely only on the grounds cited in the termination notice served to the tenant." What is left?
8-15	8.14 A.2b Note	Adds some good language about the authority to evict for criminal activity without an arrest or conviction.
8-16	8.14 A.4	Adds good language for authority to evict for alcohol abuse.
8-16	8.14 A 5a, b.	The heading "Other circumstances" is a little nebulous. How does an owner prove what was in a person's mind? However, the language about violating a condition of probation or parole is good.
8-16	8.14 B.1.d, e	These two items should not be a factor for owners to consider when terminating a tenancy for drug use or criminal activity. They are too subjective and leave the owner open to claims of discrimination and retaliatory eviction. Items d. and e. should be deleted.
8-17	8.14 C	In general, these checks will be done for us by commercial services. The language here should reflect any restrictions or issues the Department has with commercial providers. In general terms, most owners will add these reviews to annual recertification procedures for those residents not initially screened; the Department should be aware of that.
8-23	8.17 G.3	"When a tenant is evicted for material noncompliance an owner must file a civil action against the tenant to recover improper subsidy payments." Change the word "must" to "may" or "is encouraged to". The "must" language discourages owners from evicting for material noncompliance.
8-24	Example	It is obvious the person writing this example has no understanding of the 9887 and 9887A. The 9887A only gives consent for the owner to verify information requested in the individual verification forms that have been signed by the applicant/tenant. It does not permit the owner

		to obtain verification directly from the agencies named in the 9887. That authority is granted to HUD/CA in the 9887 – not the owner.
8-24-26	8.18 A.- F.	This deals with discrepancies based on information from a state wage information collection agency (SWICA) or federal agency, through income matching and discrepancy letters. Is this still applicable? I t was so fraught with errors from state information, we thought it had been discontinued.
8-26	8.19 A.1.	Current language: "The tenant must reimburse the owner for the difference between the rent the tenant should have paid and the rent he/she was actually charged..." Suggested revision: "The tenant must enter into a repayment agreement with the owner to reimburse HUD for the difference..."
8-26	8.19.A.3	The owner cannot make adjustments to the rental assistance payment. Doing so would be a fatal error in TRACS. This would have to be a manual adjustment on the 52670 and 52670-A. AND repayment is only required when the money is actually received from the tenant. (See page 8-27 Paragraph 8.19.B.1)
8-26	8.19 A.3.	Current language: "An owner should enter into a repayment plan with the tenant..." Suggested revision: "The tenant must enter into a repayment plan with the owner..."
8-26	8.19 A.5.	Current language: "A tenant must reimburse the owner for the total overpayment..." Suggested revision: "The tenant must enter into a repayment agreement with the owner to reimburse HUD for the total overpayment..."
8-27	8.20 D.	Current language: "A form for the tenant to execute and return to the owner stating whether the tenant wishes to: 1. Receive a full, immediate refund; or 2. Apply the overpayment to future monthly payments." Recommend reversing the numbers, making Item 2 the first priority. The tenant should get the option of getting a full or immediate refund provided it does not jeopardize the financial condition of the property, especially when it cannot be determined that it was a owner's deliberate oversight in calculating the tenant's share of the rent.

Chapter 9

This chapter sets forth in considerable detail, standards for both how and when data needs to be submitted. Clearly, there need to be time frames to run an agency of the size of HUD–spending in excess of $15 billion a year in Section 8. We have no general objection to time frames, so long as they are related to the need for the data. However, that said, we are disappointed that this section has no corresponding time frames in which HUD must act. In recent years, we have had increasing difficulty getting paid on a timely basis. Even getting a response to a question or issue seems to take forever. Witness the model lease commented upon elsewhere.

This chapter needs to have time frames installed for HUD to act, and there needs to be a commitment to timely action on the part of HUD.

We are also concerned that after eight years of work converting systems to fully electronic, there is still such an emphasis on keeping paper forms and systems. HUD was one of the government's most enthusiastic early adopters of internet technology. The REAC system, despite some of its flaws, shows how a completely dysfunctional paper system can be replaced with a fully newly designed automated system in less than a year and a half. It is mind boggling that a new handbook can be issued which still requires triplicate form paper submissions. If we, HUD and the Contract Administrators are to survive as viable businesses, steps need to be taken to get all of us off paper systems, and to a fully electronic system. The truth is HUD no longer has the staff to work any other way. To keep these old systems when issuing a handbook that will next be revised in 2012 is shortsighted to say the least.

Specific Comments

Page	Part	Sub Part	Comment
9-3	9.5	A.3.b	No 52670 is done for 221-d-3 and 236 and co-op.
9-4	Figure 9-2		Are there any deadlines for transmission of certifications for 236 and BMIR? Also, the last paragraph represents a change from much of current practice. Is this intentional that owners submit certs as they are completed? Also do you really want to say "prior to voucher transmission" or simply "no later than voucher transmission"? Moreover, the CA's we deal with will not accept 50059 data throughout the month. They require one transmission at the same time as the voucher. So, this line is not correct, at least for CA's. *Last paragraph, CA's limit submission. Make agree with Contract.*

9-5	9.5.	B.2	About mid-way into the paragraph a reference is made to Additional queries that are available. They are not now available – can we expect this soon? Or is this one of those items that is only available to HUD/CA staff?
9-7, 9-8	9.6		Language should be added similar to that in 9.5 A.2. CA software should carry the same certification and requirements as site software. In addition CA software MUST accept both any legal TRACS transaction and any legal TRACS field data. There are still CA software packages that can not accept 10 character unit numbers, for example. Some CAs will admit that their software does not accept what TRACS does but who argue that the site software must comply with the CA software limitations. In addition, TRACS has long requested both site and CA software to provide a way to see TRACS messages in "raw" form (for cases where the CA or site software reformats the messages to be "friendlier." This should be a requirement in 9.5 and 9.6. Finally, CAas should be required to return all TRACS messages to the sites.
9-7	9.6	B	In the first sentence, the CA should not "correct" the data. The CA should cause the site to correct the data. If the CA corrects, then the data transmitted to TRACS will not agree with the signed 50059 data requirements at the site. It has been a longstanding TRACS requirement that all data originate at the site.
9-8	9.7	B	In the last sentence, "TRACSMail" should be "TRACSMail account".
9-8	9.7	C.2	We find the wording confusing in this paragraph. We suggest, "....MAT Tenant System Record Format (MAT10, MAT15, MAT40, MAT65, and MAT70) and MAT Voucher/Payment System Record Format (MAT30 and MAT31)....."
9-8	9.7	C.2.a.	We suggest changing the first sentence of subparagraph a. to read, "The MAT Tenant System Record Format is based on the HUD 50059 Data Requirements, Move-Out, Termination, and Unit Transfer or Gross Rent Change data."
9-8	9.7	C.2.a	The referenced web page is wrong and should read: http…..mfh/trx/trxdocs.cfm.
9-9	Figure 9-3		For the note for the income record delete the words "type of". There is one record per individual income. Not one for each type of income. The note for the MAT20 should say "Future record type". The description for the TENND record should add "(one per TENHR)".
9-10	9.7	C.2.b	The referenced web page is wrong and should read:

			http…..mfh/trx/trxdocs.cfm.
9-13	Figure 9-6		Replace with examples from TRACS 201B. These are based on the 201A format.
9-15	9.8	F.3	An explanation is needed that fatal errors should not be resubmitted as a Correction (CO), since there is nothing in the TRACS database to correct. Only the discrepancy errors listed in paragraph 2 should be submitted as a CO.
9-16	9.9		We have the same opinion of this page as we did of the informational page in Chapter 1. The web addresses change too often to reference addresses in the handbook. We didn't check every web address in the handbook, but several (like noted above) are wrong. On this page, TRACS Release 201B Industry Specifications (Paragraph C.3) is no longer valid as the 201B specifications were removed from the TRACS page earlier this week. A better solution would be for HUD to assign a web page strictly for 4350.3 references.
9-17	Section 2		General Comment: Section 2 deals with Assistance Payments, Special Claims, Utility Reimbursements, and Excess Income. There are several updates that change the processing, timeframes, and required documentation for Utility Reimbursements and Special Claims.
9-19	9.12	B.2	This paragraph states that a copy of the Form HUD-52670, Housing Owner's Certification and Application for Housing Assistance Payments must be on file AT each project. The file must include the Form HUD 52670 A Part 1 and any special claims worksheets with supporting documentation. Many owners/agents do not transmit and/or voucher from each individual project but use a centralized location for transmitting. Therefore, the referenced documents are maintained at the centralized location. To require copies be made and sent back to the projects is not cost or time effective.
9-19	9.12	B.4	The last sentence is not strictly true. A unit could be billed for part of the month for one contract and for another part of the month for another contract. As long as the periods do not overlap there is no problem.
9-19	9.12	C.1.b	Should say, "Approved Section 8, PAC, and PRAC special claims."
9-20	9.12	C.3.a.3	First sentence should read, "Section 8, PAC, or PRAC contract number." Also, "11-digit Section 8 contract number" should say, "11-digit contract number."
9-21	9.12	C.3.d	This same information is on the 52670. Why must it be repeated on

			the 52670-A?
9-21	9.12	E	*Add suggestion on 30 days for dead people.*
9-22	9.12	E.3.a.1	Should say, "Calculate daily assistance by dividing the monthly assistance amount by the actual number of days in the month (round this amount to the nearest penny); and". It would be useful to include both move-in and move-out examples as does the current handbook.
9-24	9.13	B.2	Five business days for utility reimbursements seem unreasonable and, furthermore, a deadline guaranteed not to be met by owners/agents that perform centralized accounting for a large portfolio of assisted projects. Understanding that some tenants receiving a utility reimbursement have little (reported!) income, and may need the reimbursement to pay bills, it stills seems that a more realistic timeframe of 30 to 60 days is recommended. A more realistic timeframe may also aid in preventing abuse of the utility allowance reimbursement system by some tenants; e.g., not only are they receiving rental assistance for the unit, they're actually getting paid to live there!
9-25	9.14	B.2.e	We've searched and browsed all guidebooks and handbooks listed with HUDClips. Where do we find the Guidebook titled: "Processing of Special Claims Under the HAP/PRAC Contract" that is referenced here?
9-25	9.14	B.2.b	*LMR issue, and POA issues*
9-26	9.14	B.4.a.	Previously, the policy was one year from the date the vacated unit was available for occupancy.
9-26	9.14	B.4.b.1	What is the Checklist, and where is the Checklist to be found? Several CA's have their version of a checklist, but we have never seen one required by HUD, nor have we found a sample in the handbook.
9-26	9.14	B.4.b.3	In the 2nd paragraph, a certified letter is an undue expense, and later, an administrative burden to document that a certified letter was sent to the tenant. Collection agencies are not required by law to send collection notices via certified mail. Owners/agents are not required by California State law to send the itemization of the amounts deducted from the security deposit via certified letter. First class mail is reasonable and customary, especially since some owners/agents already have a practice (and go to the expense) of sending more than one demand letter. Owners/agents, acting as a "collection agent" under this circumstance, should be permitted to notify the tenant via first class mail.

9-26 9.14 B.4.b.3 Regarding the 3rd paragraph, Both HUD Los Angeles and San Francisco have already required us to submit this.

9-27 9.14 B.4.b.3 With respect to the 4th paragraph, no collection agency that we currently contract with will go to the expense of sending a copy of a demand letter to the owner/agent. It is not common practice among collection agencies to send a copy of a demand letter to the creditor. However, collection agencies will provide a monthly report (that is, an "acknowledgment") of the accounts that the owner/agent has turned over to them for collection. A report such as this would be more reasonable evidence that the matter was turned over to collection.

Would a copy of the submission letter or submission form to the collection agency be adequate? Most collection agencies don't provide a copy of their first demand letter. Normal operation is to issue a quarterly status report. To wait for the report would delay submission of a claim for damages/unpaid rent.

9-31 9.14 D.2.e It is recommended that language be added to accommodate the requirement to transfer due to a change in family composition. See page 7-23, Paragraph 7.15 B, on the requirement to transfer due to a change in family composition. Suggested revision: "The owner must take all feasible action to fill the vacancy, including contacting any applicants on the waiting list, *or contacting residents on the transfer waiting list,* and advertising the availability of the unit in accord with Fair Housing and Equal Opportunity requirements."

9-31 9.14 D.2.i and
9.14 D.3.f: Clarification needs to be made on when the security deposit can be deducted from a claim for Vacancy Loss. Example:
· Tenant vacates owing $40 in unpaid rent/damages; the security deposit is $50.
· The $40 unpaid rent/damages is deducted from the security deposit and the resident is refunded $10 plus interest.
· A vacancy claim is submitted requesting $150.
· Some HUD/CA offices reduce the vacancy claim by $40, because that much had been withheld from the security deposit.

Our members have discussed this with more than one HUD/CA office and have not received satisfaction. They insist that this meets the definition of money from an outside source. In our opinion, it is not money from an outside source – it is reimbursement for money owed.

One office suggested that we file 2 claims. File one claim for unpaid rent/ damages and one for vacancy. On the unpaid rent/damage claim charge the $40 and then apply the $40 withheld from the security

			deposit (requesting $0). The vacancy claim could then be approved with no reduction because the money withheld from the security deposit had already been applied to unpaid rent/damages. Seems like a lot of work, when a clarification could be made here.
9-32	9.14	D.4.a	Since it is permitted to submit a claim for up to 60 days' vacancy from the date the unit is available for occupancy, this basically "eats up" 60 of the 180 days. It is recommended that the time frame to submit a claim is 240 days from the date the vacated unit is available for occupancy.
9-32	9.14	D.4.b.1	What is the Checklist that is referred to?
9-32	9.14	D.4.b.3 & D.4.b.4	Are these really necessary? This information is evaluated as part of a management review. This is a lot of paperwork to copy and forward for a vacancy claim.
9-32	9.14	D.4.b.5	This requirement contradicts all the effort HUD, software providers and owners/agents have gone through to reduce our paper burden. HUD should not need a paper copy of a page of a voucher, since this information would have previously been transmitted electronically to HUD by both Tenant TRACS (a termination certification) and a HAP TRACS!
9-32	9.14	D.4.b.6	What evidence will suffice, especially when the practice is to transfer the old security to the new unit? A copy of the new lease? This needs clarification.
9-34	9.14	E.5.b.1	What is the Checklist that is referred to?
9-37	9.15	C.3	The current HUD notices pertaining to the Excess Income Report require only that the owner print and retain the monthly rent roll or rent schedule. Do you really want to receive all of this paper given that most properties are given permission to retain excess?

Appendices

Appendix B - Page B-13 Paragraph numbered (2): Last line, "See pages 10 and 11 of this Manual" should read, "See pages B-7 and B-8 of this Appendix". (This appears to have been taken from the SAVE Program User Manual, and the appropriate references were not made for this Handbook).

Page B-15 2nd paragraph under heading Mailing Form G-845S: Additional reference changes from SAVE User Manual: Delete last two sentences and replace with, "See Attachment B-1 of this Appendix for a list of names and addresses of INS offices".

Page B-15 last sentence: Delete the final words: "and is also included in HUD's instructions". It is not included anywhere else but Exhibit 4-3.

Page B-17 10th paragraph (starts with "When the Form G-845S…": Instructs the reader to refer to HUD's eligibility requirements only. Since the eligibility requirements are extensive, the appropriate sections and paragraphs of Chapter 4 should be referenced.

Page B-18 first paragraph: Instructs the reader to refer to HUD's eligibility requirements only. Since the eligibility requirements are extensive, the appropriate sections and paragraphs of Chapter 4 should be referenced.

The address for the Nebraska Office of the INS is wrong, the proper address is 3736 South 132nd Street, Omaha, Ne. 68144

Appendix C - There is good material here, but its organization is confusing. Arranging it in alphabetical order would make using the document much easier. The title of the right most column is inappropriate, it should be shortened to "verification tips".

In connection with Tip income, that is presently combined with self employment income, given the IRS rules for reporting on most tips, this area more appropriately belongs in employment income.

Page C-1 Self-employment: Includes tips and gratuities in the Factor to be Verified column. These should be moved to Employment Income, as there is written verification available. Employees who receive tips are required to report the tips to their employers, which are included in wage information and taxed.

Page C-2 Income Maintenance: The "Note" found under the column for Oral Verification needs to be moved to the bottom of every page in the Appendix.

Page C-5 Dividend Income and Savings: The verification tips are not consistent with Exhibit 5-2 ,which states that the "current balance" should be used for savings accounts – not the income over the next 12 months.

Page C-5 Interest from sale of real property: Add "Copy of Contract" to the column for

Documents Provided by Applicant.

Page C-5 Projecting interest rates is nearly impossible unless you are Alan Greenspan. In general the document most useful for determining income is the combined substitute 1099 issued by the financial institution or broker. These documents are increasingly available only in internet form, and procedures set elsewhere for obtaining electronic copies should be included here.

Page C-7 Family Composition: See comment pertaining to Pages 3-51 and 3-52, Paragraph 3.24. Basic question is: Are birth certificates still a requirement? The instruction that no verification is required on family composition to obtain assistance is an invitation to fraud for those so inclined. This provision flies in the face of the Departments recent efforts to reduce fraud.

Page C-11 Child care expenses: A child care provider cannot verify whether or not care is necessary to employment or education.

Appendix E - Unit inspection report - this report does not link to the REAC PASS protocol, and since that is the relevant standard now used, the report should be reworked to link to the REAC PASS protocol. Needs to be rewritten in full.

Appendix F - MAT codes 21-22-23, There needs to be clarification given as to how these codes are to be used. Owners and managers who are not fully conversant with the UFAS and FHAA standards may well mislabel older units which do not meet current standards. We assume that these records will be used in part as reference materials in compliance audits and triggering reviews. Having units listed as compliant when they, in fact, are not, will be a problem for both the owners and the Department.

General comment that ties to Appendix G: A disclaimer is made at the beginning of the chapter that states since TRACS will be updated more often than the handbook, owners should check the TRACS site for updated versions of the MAT Guide. That would be an excellent suggestion, if the MAT field numbers could be tied to the field numbers of the 50059 Data Requirements. We notice in Appendix G (50059 Data Requirements) that someone went to a great deal of trouble to renumber the fields that were originally assigned in Change 27. Why did they not renumber the fields to correspond with the same field in the MAT specifications? They are the same fields – identical descriptions – but different numbers We are sure it would be a benefit to all (vendors included) if the numbering system made some sense. If the TRACS specifications will be changing more often than the handbook, then let the TRACS specs be the standard for the 50059 Data Requirement fields.

Page F-1 Field 11: Please explain the difference between the TR and LR termination codes. Under what circumstances will each be used?

Appendix G – Please see comment in Appendix F.

Page G-7 Field B9:
Move-In Certification: Change Appendix K to Appendix I.
Move-Out: Last sentence should read ,“14 days…..or the day the unit was vacated”.

Unit Transfer: Delete text in parentheses that refer to GRC.
What is Prevalidation Transaction?

Page G-8 Field B13: Administrative Resubmissions is not valid. Its original description (4350.3 Change 27) was for corrections to transactions submitted prior to Release 1.1.9. (Incidentally, there never was such a release). The 201B specs actually state that is a reserved field and not for owner/agent use.

HOWEVER, that brings up a problem with the two remaining choices. Using the example of the tenant who starts work on March 1, and reports the same day: Verifications are completed by March 15, and an IR is processed to be effective May 1 (after 30-day notice of rent increase). On April 1, the resident is fired from the job. A Correction to the May 1 IR must now be processed. This is neither an owner error nor the result of a tenant misreporting. What option should be used in situations like this example?

Page G-9 Field 14: This is a future field, and should be noted such.

Page G-13 Field 40: Add "[3] Extremely Low".

Page G-17 Field B60:
2nd paragraph: There is no Section V, and we could not determine what the author might actually be referring to.
Last paragraph: There are no Exhibits 3-17, 3-18 or 3-19.

Page G-18 Fields 61 & 62 – last paragraph of each: There are no Exhibits 3-17, 3-18 or 3-19.

Page G-19 Field B63 – last paragraph: There are no Exhibits 3-17, 3-18 or 3-19.

Page G-19 Field B64: Plus signs should be changed to division signs.

Page G-28 Field C14 – Example: This example is incorrect. TRACS 201B does not have a field for child care codes that is tied to the income records. The child care code is tied to the household records, and the ceiling amount is tied to total income from wages.

Page G-29 Field D2: "AFDC" should be changed to "T=TANF", in accordance with 201B changes.

Page G-30 Field D6: This is a future field and should be noted.

Appendix I and J: We were provided pencil copies of the proposed revisions. In general, these look acceptable.

Page J-5 Paragraph B: Explain difference between Codes LR and TR.

Page J-6 Paragraph B: Add adjustment type: Retroactive certifications.

Acknowledgments:

NAHMA Regulatory Affairs Committee -
Co Chairs
Randy Lenhoff NAHP-e, The Selden Co.
Karen Steinbaum NAHP-e, SK Management Co.

Working Group Members
Pati Lord - American Apartment Management Co.
Vikki Gherzi - G&K Management, Inc.
Terry Ross - L&R Management Inc.
Roxie Munn - Compliance Watch
Michael DeGrandis - National Center for Housing Management
Jed Graef - IPM Software
Art Hessel JD - Hessel & Aluise
Michelle Kitchen - Associate Director - Government Affairs, NAHMA
George Caruso - Executive Director, NAHMA

Contributors -
AHMA Pacific Southwest
Debbie Atilano - R.P.K. Development
Lillie Barnes JD - AIMCO and L. Barnes Law Offices
Donald Beebout - Showe Companies
Jasmine Borrego- TELACU
Ron Burson - Gorsuch Management
Janet Ciarardoni - Apartment Investment and Management Co.
Kathy Coughlin JD- Coughlin & Kitay
Bob Dean - Selden Co's
Virginia Dyer - Classic Real Estate Systems
Nancy Evans - Cooperative Services Inc.
Richard Farmer - SGF Management
Cynthia Fusco, AHMA-PSW Executive Director
Priscilla Gilliam - Falkenberg/Gilliam
Mike Gonzales - G & K Management Co., Inc.
Cdr. Mike Goodwin USN ret. - Domicile Properties
Jeanne Halverson - Falkenberg/Gilliam
Michael Johnson - ALCO Properties
Bill Kennedy - Oxford Properties
David Kessler - Yardi Systems
Karen Koelemij - Orange State Construction
Joan Marker, Angelus Plaza/RHF
Jack Murray, Betty Jo Bailey, Rowe Shockley - Edgewood Management Corp.
Michelle Norris, Tony Tanksley - National Church Residences
Paula Ogle, Randy Fleece, Angie Collier - Brencor Management

Laura Okazaki- G & K Management Co., Inc.
John Sharkey - JE Sharkey Co.
Larry Sisson JD - Tesco Properties
Doris Snashall, Interfaith Housing Assistance
Gianna Solari - Solari Enterprises
Dan Thomas - Interstate Realty
Karen Wallace - Community Management Corporation