

Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing

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NAHMAanalysis 2003-1017

TRACS and Policy Concerns Related to the 4350.3 Occupancy Handbook

Effective Date or Deadline

June 12, 2003

Background

The new 4350.3 Occupancy Handbook was issued on June 12, 2003. Its requirements were to be immediately effective.

Some delays in electronic implementation were necessary due to the need to update TRACS and software. TRACS is not yet capable of supporting several of the policy changes. Last summer, HUD advised owners and agents that TRACS updates could take 18 months. Industry partners were told TRACS specific requirements would not be immediately effective, and to wait for further instructions related to TRACS. One factor that made matters particularly complicated for owners and managers was HUD's decision to make the benefits of new policies immediately effective, even though TRACS could not transmit the information related to those benefits.

Despite the initial decision at HUD to make all policy requirements immediately effective (except for TRACS updates that have not yet been made), the implementation dates of two specific policies were delayed. As announced in a memo from HUD on August 21, 2003, the effective date on the new 120-day recertification timeline for notifying tenants is January 1, 2004. This delay was granted to allow additional time for computer software updates. In the same memo, HUD pushed back the deadline for submitting special claims. The new 180-day timeframe for submission became effective August 31, 2003.

Summary

While there are several new policies introduced in the handbook, the consensus of NAHMA members is most of those policies had been in place prior to the handbook's release. In the August 21 memo, HUD released a summary of the new policies included in the handbook. Because most of the handbook is not new, the majority of NAHMA's concerns pertain to the

technological conflicts between new requirements and what can actually be submitted through TRACS.

NAHMA's TRACS and Regulatory Affairs Committee members identified several broad concerns related to the new 4350.3 handbook. NAHMA Analysis 2003-1017 examines those concerns.

Two attachments are also included in this NAHMA Analysis. The first is a summary of new policies included in the handbook. HUD released this exhibit on August 21 as part of a larger memo, "Implementation of HUD Handbook 4350.3 REV-1, Occupancy Requirements of Subsidized Multifamily Housing Programs." The second attachment is a detailed and prioritized explanation of concerns identified by NAHMA's TRACS Committee members.

Issues of Concern to NAHMA

NAHMA's primary concern with this handbook is that several key policy requirements are in effect, but not supported by TRACS or industry software. In other words, HUD's new policies are ahead of its electronic capabilities. In many of these instances, HUD has determined that the policy is effective, even though the software and TRACS infrastructure is not in place to support the policy. This puts owners and agents in the precarious and objectionable position of having to "figure out" how to comply with policy and reporting requirements. For example, because software is not yet capable of submitting partial month occupancy information which complies with the new policies, HUD has determined that owners are required to do manual calculations on partial month occupancies and must submit the information on the HAP voucher. Similarly, HUD put the policy of counting unborn children toward income limits into effect, even though TRACS cannot transmit such information.

A detailed list of software concerns has been written and approved by NAHMA's TRACS Committee. Ranked in order of importance, the issues identified by the committee relate to:

1. The need for additional time to implement the new guidance on 50059 data entry rules;
2. The requirement to include unborn children and children in the process of being adopted to determine family size for income limits is not supported by TRACS;
3. Onsite software must be updated to calculate partial month occupancies;
4. Additional guidance is needed regarding how an owner / agent is to notify TRACS that an extenuating circumstance was involved in a tenant's failure to submit the required recertification information by the anniversary date;
5. Onsite software will need to be reprogrammed to comply with the new policy on submitting 50059 data "as completed" during the month and prior to a voucher transmission;
6. The need for clarification of the term "Market-Rate Tenants" with respect to occupancy information which must be submitted on the monthly HAP voucher billing;

7. HUD should explain or resolve the differences between categories of individuals used to determine income limits and unit size;
8. Additional guidance is necessary on tenant signature requirements for partial certifications, including unit transfers and gross rent changes;
9. Procedures for calculating rent when there is a change of occupancy of a double-occupancy Section 202/8 or Section 811 PRAC unit require additional guidance; and
10. Need for additional guidance on unit transfer procedures.

Most software vendors are attempting to address items 2 and 3 on the list. They remain on the list since they are still concerns to other members, and it is possible that some vendors may be looking for further guidance from HUD.

With respect to policy concerns, the issue that several NAHMA Regulatory Affairs Committee members raised was the new recertification timeline. HUD changed the notice requirement for recertification to 120, 90, and 60 days prior to the tenant's anniversary date. The Department's decision to delay the effective date of this policy until January 1 has helped accommodate many of the software-related concerns expressed by members. However, members have also raised concerns about the implications of the timeline in cases where tenants' income has increased.

Members have expressed concerns that the new recertification policies do not provide strong enough incentives for tenants to complete the process in a timely manner. One member expressed a concern that tenants have no real incentive to recertify before the cut-off date (the 10th day of the 11th month following the last annual recertification) if they know their income has increased and their rent will be raised. The member commented:

“With HUD's new timetable, the manager may, through no fault of his own, get only 18 to 21 days (less if you count business days) to get recerts totally completed before taking a hit on the loss of revenue from any resulting rent increase. We can still give the tenant 30-day notice of the rent increase and bill the tenant for the increase retroactively. . . Why would any tenant, who knows their income has gone up, ever recertify before the cut-off date?”

Another member noted the implication of HUD's new policy seems to be that owners / agents may be unable to evict noncompliant tenants (who have not responded to the three notices and have been taken to market rent) if they report for a recertification interview on or after the anniversary. On page 7-15 of the 4350.3 handbook, (Chapter 7, Section 1, Paragraph 7-8 D.3.d.) owners are instructed, “If the tenant fails to report for the recertification interview and fails to pay market rent, or make arrangements to pay, the owner is obligated to evict for nonpayment.” The next page of the handbook, however, appears to direct owners to cease eviction proceedings after the tenant reports for the recertification interview. Page 7-16 (Chapter 7, Section 1, Paragraph 7-8 D.3.f.) specifically states, “The owner may not evict the tenant for failure to pay market rent after the tenant reports for the interview and the owner is processing the certification.” NAHMA urges HUD to review these instructions, keeping in mind the millions of

Americans who need rental assistance and the limited avenues owners / agents have to recover lost revenue.

Positive Aspects of This Policy/Proposal

NAHMA members agree that the 4350.3 occupancy handbook was due for an update. The last handbook was issued in November 1981. Several major laws and regulations had been enacted since the last handbook was published. For instance, the new handbook incorporates the Quality Housing and Work Responsibility Act (QHWRA) and the screening and eviction rule. A comprehensive, new handbook is very helpful in pulling together all of the many laws, regulations, and notices that have been issued since publication of the last handbook in 1981 and since its last major update in 1995.

One particularly welcome policy change is the new income threshold for interim recertifications. Under the old handbook, residents had to be recertified if their income increased by more than \$40 per month. The new handbook raises the threshold for interim recertifications to increases in income exceeding \$200 per month.

NAHMA's position

Overall, NAHMA is pleased that HUD has issued an updated occupancy handbook.

That said, we believe the initial immediate effectiveness of the handbook upon its release created an undue burden for owners and managers. We believe a more pragmatic way to implement the handbook would have been to release an upfront summary of new policies to accompany the handbook, postpone the effective date until the industry has had a reasonable opportunity to digest the changes, and postpone the implementation of any policy change which is not yet supported by TRACS until the electronic infrastructure is operational.

NAHMA continues to believe 4350.3 requirements which are not yet supported by TRACS should be delayed until those requirements can be properly implemented. NAHMA objects to the Department's expectation on owners and agents to do extra manual work to implement new policies which are not supported by TRACS. Requiring the industry to perform extra manual work defeats the purpose of e-government and creates uncertainty in voucher submissions.

NAHMA will continue pressing the Department to issue clear guidance on how to implement the new 4350.3 policies which are not supported by TRACS. We will also continue to advocate for delays in the new policy requirements when appropriate.

HUD's Summary of New Policies in the 4350.3, Issued on August 21, 2003

NEW POLICIES INTRODUCED IN HANDBOOK 4350.3 REV-1, OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS

1. Estimating medical expenses

- **New Handbook:** 1) Owner may use expenses the family anticipates to be paid during the 12 months after recertification. 2) Owner may use unreimbursed medical expenses paid during the past 12 months to estimate medical expenses. 3) Past "one-time" nonrecurring medical expenses that have been paid in full may be used in the calculation of the medical expense deduction if the one-time expense was not used for an interim recertification in the prior year. (Paragraph 5-10.D)
- **Old Handbook:** Expenses anticipated to be paid by the family in the 12 months after recertification.

2. Increases the threshold that triggers an interim recertification.

- **New Handbook:** \$200 (Paragraph 7-11)
- **Old Handbook:** \$40

3. Revises recertification timeline for starting the process of notifying tenants.

- **New Handbook:** 120 days prior to tenant's recertification anniversary date (Paragraph 7-7)
- **Old Handbook:** 90 days prior to tenant's recertification anniversary date

4. Tenant Selection Plans

- **New Handbook:** Requires owners to develop, and make public, a tenant selection plan that includes certain required contents. (Paragraph 4-4.A)
- **Old Handbook:** Stated that owners should develop a written tenant selection plan

5. **Affirmative Fair Housing Marketing Plan**

- **New Handbook:** Requires owners to update AFHMP every 5 years as needed to ensure compliance. (Paragraph 4-12 F)
- **Old Handbook:** No requirement for frequency of update

6. **FAMILY SIZE FOR INCOME LIMITS**

- **New Handbook:** Owners must include unborn children and children who are in the process of being adopted for determining family size for income limits. (Paragraph 3-6.E.3)
- **Old Handbook:** Owners must count all children anticipated to reside in a unit for determining how many bedrooms a family may occupy. A note at the bottom of Figure 3-6 indicated that unborn children and children who are in the process of being adopted are considered household members for determining income limits, however guidance was given to disregard this note.

7. **House Rules**

- **New Handbook:** House rules are established at the discretion of the owner. Provides extensive discussion for establishing house rules and suggested “reasonable” and “unreasonable” house rules. (Paragraph 6-9)
- **Old Handbook:** House rules are established at the discretion of the owner. Provided limited examples of house rules.

8. **Remaining Family Member**

- **New Handbook:** Provides extensive guidance for defining remaining family member and defines under what circumstances assistance may, or may not, be provided that person. (Paragraph 3-15)
- **Old Handbook:** Defines “surviving family member.” Offers no guidance on when assistance may, or may not, be provided that person.

9. **59 Data Requirements** (a form with a description of certain tenant data that the owner is required to collect from tenants that’s used to calculate tenant’s eligibility and tenant’s rent).

- **New Handbook:** Form must be signed by all adult members of the household. (Paragraph 9-5.A.4.b)
- **Old Handbook:** Form must be signed only by head of household.

10. Special Claims for Unpaid Rent and Tenant Damages and Vacancy Losses During Rent-Up

- **New Handbook:** Owner must submit claim within 180 days after the unit becomes available for occupancy. (Paragraph 9-14.B.4.a and 9-14.C.
- **Old Handbook:** Owner must submit claim within one year after the unit becomes available for occupancy for special claims for unpaid rent and tenant damages. There was no stated time limit for vacancy losses during rent-up.

11. Calculating Partial Month Occupancy

- **New Handbook:** Calculate subsidy by dividing the actual number of days in a month.
- **Old Handbook:** Calculate subsidy by dividing by 30 days.

NAHMA TRACS Committee Comments on 4350.3 Handbook REV-1

Rank	Issue/Concern	Comments from Respondents
1	<p>New Guidance on 50059 Data Entry Rules</p> <p>Appendix 8 lists data entry rules for the 50059 data requirements. It also gives examples of rounding and lists data entry rules for TRACS submissions. The guidance is different and more detailed than earlier guidance. Software vendors and TRACS need time to implement these requirements. There may also be more detailed questions about specific situations that will arise.</p>	<p>1. This issue is also related to prorate calculation items.</p>
2	<p>Including Unborn Children and Children in the Process of Being Adopted to Determine Family Size for Income Limits</p> <p>Chapter 3, Section 1, Paragraph 3-6 E.4.d & e, Page 3-8.</p> <p>There is no way to tell TRACS about unborn children and children who are in the process of being adopted. The complication is that such people count as household members but do not count for allowance calculations. Either we need a flag to attach to a dependent record indicating this case or a new relationship code (P for pending??).</p>	<p>1. Certain current software will not allow a move-in transaction if income limits are not met. For example, a pregnant single female earns income that is greater than the one person income limit, but less than the two person income limit. The current software will not allow/process the move-in transaction because the person does not qualify under the previous handbook. A delay in implementation is required to allow vendor to update software.</p> <p>2. Vendors are currently working on making changes to software to comply.</p>
3	<p>Calculating Partial Month Occupancies</p> <p>Chapter 9, Section 2, Paragraph 9-12 E.3, Pages 9-22 and 23.</p> <p>Pro-rate adjustments are to be based upon actual days in month and the daily rate rounded to nearest penny. This is a change in policy. Vendors (site and Contract Administrators) will need to reprogram. A future implementation date must be established to allow time for vendors to update software.</p>	<p>1. This also affects overall accounting/prorate practices for housing providers with mixed conventional/affordable portfolios. Information systems managers will only want to make one prorate programming change for the entire system.</p> <p>2. Add “daily rate” is rounded to the nearest penny.</p> <p>3. Vendors are currently working on making changes to software to comply.</p>

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4	<p data-bbox="197 155 1241 228">Extenuating Circumstances When the Tenant has not Submitted Required Recertification Information by the Anniversary Date</p> <p data-bbox="197 264 1241 300">Chapter 7, Section 1, Paragraph 7-8 D.4, Page 7-17.</p> <p data-bbox="197 336 1241 592">If extenuating circumstances are known prior to the point of non-compliance, is it acceptable to submit an annual cert with last year's data and with the tenant unable to sign indicator set to true? How is the owner/agent to notify TRACS that an extenuating circumstance was involved? Will the on-site manager and owner/agent be held harmless for signing a certification that has unverified and updated information (assuming information from the last recertification is used)?</p>	<ol data-bbox="1304 155 2028 446" style="list-style-type: none"> <li data-bbox="1304 155 2028 300">1. The important question here which must be answered is, "How is the owner/agent to notify TRACS that an extenuating circumstance was involved." <li data-bbox="1304 336 2028 446">2. The Committee is seeking additional guidance, and is not suggesting the solution should be to submit an annual cert with last year's data.
5	<p data-bbox="197 634 1241 708">Submitting 50059 Data "As Completed" During the Month and Prior to a Voucher Transmission</p> <p data-bbox="197 743 1241 779">Chapter 9, Figure 9-2 "Deadlines for TRACS Submissions" Page 9-7.</p> <p data-bbox="197 815 1241 954">The figure states 59s should be submitted "during the month as completed" and must be transmitted before a voucher transmission. This is a change of policy and will require vendors to reprogram. Is this a requirement or simply a recommendation?</p>	

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6	<p data-bbox="201 159 1157 261">Need for Clarification of the Term “Market-Rate Tenants” with Respect to Occupancy Information which Must Be Submitted on the Monthly HAP Voucher Billing.</p> <p data-bbox="201 305 894 337">Chapter 9, Section 2, Paragraph 9-12 C.3.b, Page 9-21</p> <p data-bbox="201 378 1213 667">If a project has 236 or BMIR residents that are paying the basic or contract rent are such residents considered “market” tenants or should the unit not be counted? The MAT Guide 2.0.1.B release (mat 30 section 2 Mat field 10 Start position 81) states, “Number units market rate. These are occupied units, included in the Units in Contract Count (field #7) that are not assisted by the subsidy for which this voucher was submitted.” The title of the line though refers to “market” that has a different meaning to residents of 236 and BMIR properties that pay basic or contract rent.</p> <p data-bbox="201 708 1178 813">If a Section 236 property has 10 units with 100% section 8 and 5 units are occupied by section 8 residents, 3 are vacant, and 2 are 236 residents paying basic rent, then should the numbers on the voucher be:</p> <table data-bbox="201 854 1192 1032"> <thead> <tr> <th data-bbox="201 854 506 886"><u>Via the TRACS Guide:</u></th> <th data-bbox="621 854 674 886"><u>OR</u></th> <th data-bbox="772 854 978 886"><u>Via the 4350.3:</u></th> <th></th> </tr> </thead> <tbody> <tr> <td data-bbox="201 889 453 922">7a units in contract</td> <td data-bbox="579 889 621 922">10</td> <td data-bbox="772 889 1024 922">7a units in contract</td> <td data-bbox="1150 889 1192 922">10</td> </tr> <tr> <td data-bbox="201 925 537 958">7b units receiving subsidy</td> <td data-bbox="600 925 621 958">5</td> <td data-bbox="772 925 1108 958">7b units receiving subsidy</td> <td data-bbox="1171 925 1192 958">5</td> </tr> <tr> <td data-bbox="201 961 411 993">7c units Market</td> <td data-bbox="600 961 621 993">2</td> <td data-bbox="772 961 982 993">7c units Market</td> <td data-bbox="1171 961 1192 993">0</td> </tr> <tr> <td data-bbox="201 997 411 1029">7d units Vacant</td> <td data-bbox="600 997 621 1029">3</td> <td data-bbox="772 997 982 1029">7d units Vacant</td> <td data-bbox="1171 997 1192 1029">3</td> </tr> </tbody> </table> <p data-bbox="201 1073 1157 1211">If the TRACS Guide method is correct, then references in the 4350.3 guide should be changed from “Market” to units “not receiving subsidy”. If the 4350.3 method is correct, then a change needs to be made in the TRACS validation checks.</p>	<u>Via the TRACS Guide:</u>	<u>OR</u>	<u>Via the 4350.3:</u>		7a units in contract	10	7a units in contract	10	7b units receiving subsidy	5	7b units receiving subsidy	5	7c units Market	2	7c units Market	0	7d units Vacant	3	7d units Vacant	3	
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7	<p data-bbox="197 155 1241 224">Differences between Categories of Individuals Used to Determine Income Limits and Unit Size</p> <p data-bbox="197 266 1241 334">Chapter 3, Section 1, Paragraph 3-6 E.4.c, Page 3-8. and Chapter 3, Section 2, Paragraph 3-22, E.6.c, Page 3-60.</p> <p data-bbox="197 376 1241 808">There are differences between the categories of people listed on page 3-8 for income limit determination and those listed on page 3-60 for unit size determination. For example, page 3-60 says that an owner MAY count children who are away at school and who live at home during recesses when determining unit size. On page 3-8, such children MUST be included in family size for income limit determinations. Having a person count as family for one purpose and possibly not for another at the owner's option places a burden on software vendors and owner/agents. Another difference is that Paragraph 3-22 E.6.b.(3), Page 3-60 refers to children whose custody is being obtained. Page 3-8 does not include these children. Harmonizing the lists and wording would help tremendously. If there are deliberate differences between the lists, it would be helpful to say so explicitly.</p>	<ol data-bbox="1304 155 1976 516" style="list-style-type: none"> <li data-bbox="1304 155 1976 263">1. This particular issue is not a TRACS issue. The key issue for TRACS is who must be counted for income eligibility purposes. <li data-bbox="1304 305 1976 516">2. True, there are differences between who <i>must</i> be counted for occupancy purposes, and whose income <i>must</i> be counted for income eligibility purposes. Harmonization of these lists, or at the very least an explanation about why they are different, would be helpful.
8	<p data-bbox="197 813 1241 881">Additional Guidance is Necessary on Tenant Signature Requirements for Partial Certifications, Including Unit Transfers and Gross Rent Changes</p> <p data-bbox="197 924 1241 959">Chapter 7, Section 3, Pages 7-24 to 26.</p> <p data-bbox="197 1002 1241 1172">The old handbook gave guidance on tenant signatures for partial certifications. No such guidance is given here for Unit Transfers, and it is needed. Should any such signature dates be transmitted to TRACS? If a tenant signature is required, should all adults sign as is now required for a full certification? This could be extremely burdensome when a gross rent change is done in a large property.</p>	

Rank	Issue/Concern	Comments from Respondents
9	<p data-bbox="197 155 1241 261">Procedures for Calculating Rent When there is a Change of Occupancy of a Double-Occupancy Section 202/8 or Section 811 PRAC Unit Require Additional Guidance</p> <p data-bbox="197 302 1241 337">Chapter 5, Section 4, Paragraph 5-28 E, Pages 5-69 and 70.</p> <p data-bbox="197 378 1241 480">The policies on Section 202/8 and Section 811 group homes represent a change with respect to PRACS. Vendors need more guidance on billing. Also, what about partial month occupancy and adjustments under this new model?</p>	
10	<p data-bbox="197 485 1241 521">Need for Additional Guidance on Unit Transfers</p> <p data-bbox="197 561 1241 597">Chapter 7, Section 3, Paragraph 7-16, Page 7-24 through 7-26.</p> <p data-bbox="197 638 1241 844">No guidance is given on the effective date of rent changes for unit transfers. Additional guidance is also needed on cases where the unit transfer corresponds to a change in household composition. Do you do a unit transfer followed by an interim certification effective on the first of the month (following notice requirements), or do you do a full certification unit transfer changing both the unit and household composition simultaneously?</p>	<p data-bbox="1310 485 2028 662">1. A problem is that management must make decisions based on the limitations of the existing rules. The Committee believes the proper procedure is to do the unit transfer followed by the interim effective on the first of the month.</p>