

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

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January 15, 2010

NAHMAanalysis # 2010 - 0115

Rent, Income, and EIV: Final Rule

DISCLAIMER: This NAHMAanalysis highlights major policy changes related to HUD's Income and Rent Determination Final Rule. It is intended for only informational purposes, and does not constitute compliance advice.

Effective Date or Deadline

HUD's Final Rule, "Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System-Amendments," becomes effective on January 31, 2010.¹

Background

The "Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs Final Rule," was first published in the *Federal Register* on January 27, 2009. This version of the rule had been finalized at the very end of the Bush Administration. After it was published in the early days of the new Obama Administration, HUD delayed implementation and reopened the rule for public comments.

On December 29, 2009, HUD published a substantially revised final rule. This regulation *does not* include troublesome provisions from the original rule which would have changed the definition of annual income and HUD's noncitizen rules. The scope of the final regulation has been scaled back to:

- Simplify Social Security Number (SSN) disclosure and verification processes, to the extent feasible, and consistent with maintaining confidentiality of these processes;
- Mandate the use of the Enterprise Income Verification (EIV) System in HUD's public and assisted housing programs; and

¹ The *Federal Register* notice, which includes the new rule and HUD's answers to public comments, is available on NAHMA's HUD webpage, at [Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System—Amendments; Final Rule.](#)

- Require Public Housing Agencies (PHAs) to electronically submit form HUD-50058, including the Family Self-Sufficiency (FSS) Addendum. It also establishes record keeping requirements for these forms.

This NAHMA analysis will discuss the final rule's effect on assisted housing programs. The new regulatory language is provided as Appendix 1. Detailed information about changes to the rule and NAHMA's public comments are available on our HUD webpage, <http://www.nahma.org/member/hud.html>, under the Enterprise Income verification heading. Relevant links on this webpage are also found in Appendix 2.

Summary

SSN Disclosure, documentation and verification required for all household members

HUD's insistence on SSN disclosure is addressed in its response to public comments. The disclosure will help ensure those who seek HUD's housing assistance meet the program criteria for income-qualification and legal immigration status. Furthermore, the SSN is necessary to verify income and employment data through the EIV system.

All applicants for assistance and program participants must disclose the social security numbers (SSNs) assigned to themselves and all members of their household. Exemptions are provided for:

- Aliens who do not contend eligible immigration status.
 - Assistance to these household continues to be prorated.
- Current participants who are 62 years of age or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010.
 - Qualifying seniors are exempt from the SSN disclosure mandate for all future examinations, even if the senior moves to a new HUD-assisted property.
- All participants, regardless of age, who have previously disclosed a valid SSN and have not been issued a new SSN are exempt from having to re-provide their SSN for duplicative verification.

Documents required in order to verify the SSNs include:

- A valid SSN card issued by the Social Security Administration;
- An original document issued by a federal or state government agency, which contains the name, SSN, and other identifying information of the individual; or,
- Other evidence HUD may prescribe in administrative instructions.

Once a household has disclosed their SSNs and the owner/agent has verified each of them, HUD lays out rules for adding new household members. New household members under the age of 6 who already have a SSN are subject to the same disclosure and verification requirements as new household members who are at least 6 years of age. That is, the resident must provide the owner/agent with the new household member's SSN and the required verification documents at the time of the request, or at the time of processing the interim reexamination or recertification of family composition. When the resident asks to add a new household member who is under the age of 6 and has not been assigned a SSN, the resident must provide the child's SSN and required verification documents within 90 calendar days of adding the child to the household. If the household does not provide the child's SSN and verification within 90 days due to unforeseen circumstances outside the resident's control, the owner/agent must grant an extension of one additional 90-day period. HUD instructs,

“During the period that the processing entity [O/A] is awaiting documentation of a SSN, the processing entity [O/A] shall include the child as part of the assisted household and the child shall be entitled to all the benefits of being a household member. If, upon expiration of the provided time period, the participant fails to produce a SSN, the processing entity shall follow the provisions of Sec. 5.218 [termination of assistance and/or termination of tenancy due to noncompliance with the SSN disclosure and verification requirements].”

The rule also provides O/As with greater flexibility to determine the timing for disclosure of a new SSN assigned to a resident or a member of the resident’s household. The new SSN and required documentation must be submitted to the O/A at either:

- The time of receipt of the new SSN;
- At the next interim or regularly scheduled reexamination or recertification of family composition or income, or other reexamination or recertification; or,
- At such earlier time specified by the O/A.

According to HUD, O/As must not reject documentation of the SSNs “except as HUD may otherwise prescribe through publicly issued notice.”

Penalties for noncompliance

Applicants for affordable housing are prohibited from receiving assistance until they can provide the SSNs and verification documents for each household member. However, applicants may remain on the waiting list if they are otherwise eligible to participate in the program.²

The consequences for noncompliance are more severe for residents. The entire household faces mandatory termination of assistance and / or termination of tenancy if one member of the household fails to comply with the SSN disclosure, documentation and verification requirements. HUD emphasized that the possible loss of tenancy is subject to the exemptions provided in HUD’s regulations. O/As may defer the termination of a resident who fails to comply with the SSN disclosure requirements by providing an additional 90 calendar days for such disclosure, only if:

- Failure to meet these requirements was due to unforeseen circumstances outside the tenant’s control; and
- There is a reasonable likelihood that the participant will be able to disclose a SSN by the deadline.

If the tenant still does not meet the SSN disclosure requirements at the conclusion of the 90-day extension, the failure “...will result in termination of the assistance or tenancy, or both, of the participant and the participant’s household.”

²Different rules apply for applicants to the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals. For the SRO program, the SSN and verification documents must be provided to the processing entity within 90 calendar days from the date of admission into the program. An extension of one additional 90-day period must be provided if the noncompliance was due to unforeseen circumstances beyond the applicant’s control. If the individual fails to produce a SSN when the 90-day extension period expires, the processing entity shall follow the penalties established for noncompliance—termination of assistance and/or termination of tenancy.

Enterprise Income Verification (EIV)

HUD is proceeding with full implementation of its EIV System. Effective January 31, owners, management agents and public housing agencies must use the EIV system in its entirety “As a third party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income...” and “to reduce administrative and subsidy payment errors...”.

In response to confusion about what the rule means by requiring “use of EIV in its entirety,” HUD explained,

“Use of EIV in its entirety means that EIV is required by the PHA or O/A to verify the employment and income of existing tenants at the time of all mandatory reexaminations and recertifications. In addition, the PHA or O/A must use other reports in EIV such as the Failed Verification Report, the Deceased Tenant Report, the Multiple Subsidy Report, etc., at various times to reduce administrative and subsidy payment errors.”

Use of EIV is required in the following programs:

- Public Housing program under 24 CFR part 960;
- Section 8 Housing Choice Voucher (HCV) program under 24 CFR part 982;
- Moderate Rehabilitation program under 24 CFR part 882;
- Project-based Voucher program under 24 CFR part 983;
- Project-based Section 8 programs under 24 CFR parts 880, 881, 883, 884, 886, and 891;
- Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);
- Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013);
- Sections 221(d)(3) and 236 of the National Housing Act (12 U.S.C. 1715l(d)(3) and 1715z-1); and
- Rent Supplement program under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

Owners, management agents and PHAs are still prohibited from using EIV to certify incomes for residents assisted through the Low Income Housing Tax Credit program or Section 515 [without Section 8]. Use of the EIV data is limited to owners, agents and PHAs who have transmitted a form HUD-50058 to the PIC or HUD-50059 to Tenant Rental Assistance Certification System (TRACS). HUD cites restrictions from the agencies that provide the employment and income data, the Social Security Act, and the Privacy Act as the reasons why EIV use is limited to authorized personnel administering HUD programs.

Members should be advised that EIV may not be used to verify an *applicant's* income or employment. HUD sought to clarify when owners, agents, and PHAs must use EIV.

“With respect to initial admission, EIV cannot be used by processing entities to verify an applicant’s income, since form HUD–50058 or HUD–5009 is not transmitted to HUD until after the family is admitted to the program. HUD will issue administrative guidance with respect to the timeframe for consulting the EIV system once the form HUD–50058 or HUD–50059 has been transmitted. This will allow processing entities to promptly follow up with the family to discuss, in a timely manner, any EIV-noted disparities in reported family employment, income, identity, or receipt of duplicate rental assistance and make

any necessary subsidy adjustments based on confirmed information that may not have been reported or may have been understated by the family. HUD obtains income information for all newly admitted families within 60 days of receiving the form HUD-50058 or HUD-50059 from the processing entities.”

Owners, agents and PHAs face penalties for failure to use the EIV system in its entirety. Consequences may include sanctions and/or the assessment of disallowed costs associated with any resulting incorrect subsidy or tenant rent calculations, or both. HUD’s December 2009 webcast and companion slide presentation state that failure to properly implement EIV as of January 31, 1020 will trigger MOR findings.³ Appendix 3 lists the EIV-related MOR findings once using the system becomes mandatory. Because data in EIV is protected by the Privacy Act and the Social Security Act, there are criminal and civil penalties for misuse of the information. Unauthorized disclosure of EIV data is punishable by a felony conviction, maximum \$5000 fine or five years imprisonment and civil damages. Unauthorized inspection carries a misdemeanor penalty of up to \$1000 and/or one year imprisonment and civil damages.

Positive Aspects of This Policy/Proposal

NAHMA is pleased that the new Administration substantially revised the final rule before proceeding with implementation. HUD has thoughtfully addressed several concerns raised by NAHMA and other industry organizations.

First, HUD withdrew the amended definition of “annual income” that was included in the initial January 27, 2009 version of the rule. NAHMA’s previous comments expressed serious concerns that the historical income calculation method in the definition left O/As unclear about when they should determine the tenant/applicant’s current income by “projecting-forward” or by “looking back” at past income received. NAHMA appreciates that HUD decided to drop these changes from the Final Rule which takes effect on January 31, and to maintain the definition of annual income as it was prior to January 27, 2009.

We also applaud HUD’s decision to withdraw the January 27, 2009 amendments to the noncitizens regulations. As NAHMA requested in our March 13 comments, the final rule states that the SSN disclosure requirements are not applicable to household members who do not claim the eligible immigration status necessary to receive assistance. Assistance to families with mixed immigration eligibility status will continue to be prorated.

The final rule makes other noteworthy improvements in the SSN disclosure and verification requirements that will reduce the administrative burdens for housing providers, enhance privacy protections for residents, and minimize inconvenience to residents. We are pleased that HUD acknowledged and addressed the unintended consequences these requirements could have had on current elderly residents. “Grandfathering” existing elderly residents from having to disclose a SSN is a sensible approach to implementing this policy. Another prudent clarification exempts individuals who have previously disclosed a valid SSN from the disclosure and verification requirements (unless they were issued a new SSN). Additionally, the final rule removes guesswork from the SSN verification process by listing specific types of documentation participants must submit to verify their SSN.

With respect to implementation of EIV, NAHMA is pleased that HUD now allows independent public auditors to view EIV records. These auditors must sign the EIV Rules of Behavior, which O/As must keep on file. The auditors may only view EIV hard copy information contained in tenant files to assess

³ It is reasonable to assume that MOR findings could trigger 2530 flags in APPS.

the O/A's program compliance. Members must take note that third party auditors are **not** authorized to obtain access to EIV, and they may **not** download any information from EIV to portable devices.

Issues of Concern to NAHMA

EIV implementation is mandatory as of January 31. Through the public comment process, NAHMA strongly objected to the *mandated* use of EIV for multifamily owners and management agents. We argued that there are a number of technical, procedural and policy issues that the Department must resolve before subjecting owners/agents to penalties for noncompliance. Unfortunately, the Department insists that further delay in EIV implementation is “without satisfactory justification.” In HUD's view, the public interest in ensuring correct subsidy determinations outweighs concerns about EIV-related technical and policy issues. Nevertheless, HUD conceded that system improvements will be needed and users will require ongoing education and guidance.

Although NAHMA agrees that EIV is an effective tool to discover unreported income, we strongly urged HUD to reduce the administrative burdens on affordable housing providers associated with using EIV prior to implementing the mandate. Such burdens include, but are not limited to, procedures for:

- Authorization to access and to use EIV;
- Collecting overpaid subsidy from residents;
- Refunding overpaid subsidy to HUD;
- Documenting how the owner/agent determined whether the tenant's reported income or the EIV information was in error;
- Complying with the EIV mandate despite high staff turnover at the site-level management of affordable properties.

NAHMA is quite disappointed with HUD's response to public comments about EIV-related administrative burdens:

“HUD disagrees with the commenter that use of the EIV system increases administrative workload. EIV is an automated system that is free to the user and available 24 hours a day, 7 days a week. In contrast to a manual system, EIV has been determined to be the most effective, efficient, and least burdensome way to verify income. Further, HUD will be issuing guidance to processing entities on how to use EIV as effectively and efficiently as possible.”

What the rule does not explain is just how much administrative work will be necessary to comply with the EIV mandate. Owners and management agents will have to make a number of changes to their tenant selection plans, policies and procedures in order to run the required EIV reports. The O/A's staff will require ongoing security training. Paperwork and documentation will be essential—especially with respect to the HUD-9887, the HUD-50059, resolving income discrepancies, EIV rules of behavior, and complying with the record keeping requirements. Also, HUD is recommending having two EIV coordinators in case one leaves.

On a more positive note, HUD did change the timetable for certifying EIV *users* from quarterly to bi-annually. NAHMA specifically requested a longer period of time between recertifications for EIV users.

Besides the final rule, other guidance materials are available. HUD's Office of Housing published Notice H 09-20, Enterprise Income Verification (EIV) on December 7, 2009. A December 2009 instructional webcast led by Multifamily's Office of Housing and Grant Administration and the accompanying slide

show for the webcast can be accessed at <http://www.hud.gov/offices/hsg/mfh/rhiip/eiv/eivtraining.cfm>. NAHMA has asked HUD to clarify several aspects of these materials.

First, we asked HUD to be more specific about when each report available through EIV must be run. The regulation and its preamble emphasize that EIV is to be used to verify employment and income at the time of recertification. The preamble explains you can't use EIV at move-in because the HUD-50059 is not yet filed. Additionally, a form HUD-9887 must be on file before the O/A may access the income reports in EIV. The webcast, slideshow and Notice H 09-20 make more detailed distinctions between the verification reports and the income reports available in EIV. For instance, the latter documents advise O/As to run the existing tenant report on applicants. The existing tenant report does not require a HUD-9887, and the report includes no income data. Further guidance is urgently needed to explain when each specific EIV report is to be run at each stage of the application, move-in, and recertification process. We have asked HUD to prepare a matrix that lists each report in EIV (i.e. existing tenant, multiple subsidy, income reports, etc.) required documentation on file for each report (such as a 9887 for tenant, reference in tenant selection plan, etc.), when the O/A MUST run the report, and when the O/A may run the report.

Another area of concern is instructions for repayment agreements. On page 26 of Notice H 09-20, paragraph (c) states, "The repayment agreement should contain a clause whereby the terms of the agreement can be renegotiated if there is a decrease or increase in the family's income." NAHMA has strongly urged HUD to revise the guidance by including a dollar value threshold for the renegotiation. For the sake of consistency, the \$200 per month increase or decrease which triggers recertification would be appropriate. The sentence could easily be changed to read, "The repayment agreement should contain a clause whereby the terms of the agreement can be renegotiated if there is a \$200 per month decrease or increase in the family's income."

Finally, considering the amount of administrative effort that will be required to correct improper subsidies to tenants after the fact, NAHMA remains concerned that EIV income and employment information is not available when the family applies to participate in the housing programs. NAHMA encourages HUD to expedite guidance to O/As with respect to the timeframe for consulting income and employment information in the EIV system once the form HUD-50059 has been transmitted.

NAHMA's position

NAHMA remains concerned about HUD's decision to *require* multifamily housing operators to use EIV as of January 31, 2010. We agree that EIV serves an important purpose as a tool to offer greater assurance that the proper housing benefit is going to qualified individuals. We have long supported extending EIV access to multifamily O/As. Nevertheless, we are concerned about the additional administrative requirements associated with this mandate.

Until NAHMA can assess the extent and severity of the administrative burdens the EIV mandate imposes on members, we will not advocate extending EIV to certify tenants' income in Low Income Housing Tax Credit and bond financed properties. This subject is likely to receive considerable attention at the NAHMA Winter Meeting in March. In the meantime, NAHMA welcomes feedback from members about how this new regulation affects their operations.

APPENDIX 1: TEXT OF THE FINAL RULE

HUD amends 24 CFR parts 5 and 908, as amended in the final rule published on January 27, 2009, at 74 FR 4832, as follows:

PART 5--GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

- 1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109-115, 119 Stat. 2936.

- 2. Revise Sec. 5.216 to read as follows:

Sec. 5.216 Disclosure and verification of Social Security and Employer Identification Numbers.

(a) *General.* The requirements of this section apply to applicants and participants as described in this section, except that this section is inapplicable to individuals who do not contend eligible immigration status under subpart E of this part (see Sec. 5.508).

(b) *Disclosure required of assistance applicants.* Each assistance applicant must submit the following information to the processing entity when the assistance applicant's eligibility under the program involved is being determined.

(1) The complete and accurate SSN assigned to the assistance applicant and to each member of the assistance applicant's household; and

(2) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.

(c) *Disclosure required of individual owner applicants.* Each individual owner applicant must submit the following information to the processing entity when the individual owner applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to the individual owner applicant and to each member of the individual owner applicant's household who will be obligated to pay the debt evidenced by the mortgage or loan documents; and

(2) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.

(d) *Disclosure required of certain officials of entity applicants.* Each officer, director, principal stockholder, or other official of an entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to each such individual; and

(2) The documentation referred to in paragraph (g)(1) of this section to verify each SSN.

(e) *Disclosure required of participants--(1) Initial disclosure.* (i) Each participant, except those age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010, must submit the information described in paragraph (e)(1)(ii) of this section, if the participant has:

(A) Not previously disclosed a SSN;

(B) Previously disclosed a SSN that HUD or the SSA determined was invalid; or

(C) Been issued a new SSN.

(ii) Each participant subject to the disclosure requirements under paragraph (e)(1)(i) of this section must submit the following information to the processing entity at the next interim or regularly scheduled reexamination or recertification of family composition or income, or other reexamination or recertification for the program involved:

(A) The complete and accurate SSN assigned to the participant and to each member of the participant's household; and

(B) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.

(2) *Subsequent disclosure.* Once a participant has disclosed and the processing entity has verified each SSN, the following rules apply:

(i) *Addition of new household member who is at least 6 years of age or under the age of 6 and has an assigned SSN.* When the participant requests to add a new household member who is at least 6 years of age, or is under the age of 6 and has an assigned SSN, the participant must provide the following to the processing entity at the time of the request, or at the time of processing the interim reexamination or recertification of family composition that includes the new member(s):

(A) The complete and accurate SSN assigned to each new member; and

(B) The documentation referred to in paragraph (g)(1) of this section to verify the SSN for each new member.

(ii) *Addition of new household member who is under the age of 6 and has no assigned SSN.*

(A) When a participant requests to add a new household member who is under the age of 6 and has not been assigned a SSN, the participant shall be required to provide the complete and accurate SSN assigned to each new child and the documentation referred to in paragraph (g)(1) of this section to verify the SSN for each new child within 90 calendar days of the child being added to the household.

(B) The processing entity shall grant an extension of one additional 90-day period if the processing entity, in its discretion, determines that the participant's failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant. During the period that the processing entity is awaiting documentation of a SSN, the processing entity shall include the child as part of the assisted household and the child shall be entitled to all the benefits of being a household member. If, upon expiration of the provided time period, the participant fails to produce a SSN, the processing entity shall follow the provisions of Sec. 5.218.

(iii) *Assignment of new SSN.* If the participant or any member of the participant's household has been assigned a new SSN, the participant must submit the following to the processing entity at either the time of receipt of the new SSN; at the next interim or regularly scheduled reexamination or recertification of family composition or income, or other reexamination or recertification; or at such earlier time specified by the processing entity:

(A) The complete and accurate SSN assigned to the participant or household member involved; and

(B) The documentation referred to in paragraph (g)(1) of this section to verify the SSN of each individual.

(f) *Disclosure required of entity applicants.* Each entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) Any complete and accurate EIN assigned to the entity applicant; and

(2) The documentation referred to in paragraph (g)(2) of this section to verify the EIN.

(g) *Required documentation--(1) SSN.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraphs (a) through (e) of this section is:

(i) A valid SSN card issued by the SSA;

(ii) An original document issued by a federal or state government agency, which contains the name of the individual and the SSN of the individual, along with other identifying information of the individual; or
(ii) Such other evidence of the SSN as HUD may prescribe in administrative instructions.

(2) *EIN.* The documentation necessary to verify an EIN of an entity applicant that is required to disclose its EIN under paragraph (f) of this section is the official, written communication from the Internal Revenue Service (IRS) assigning the EIN to the entity applicant, or such other evidence of the EIN as HUD may prescribe in administrative instructions.

(h) *Effect on assistance applicants.* (1) Except as provided in paragraph (h)(2) of this section, if the processing entity determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide:

(i) The complete and accurate SSN assigned to each member of the household; and

(ii) The documentation referred to in paragraph (g)(1) of this section to verify the SSN of each such member.

(2) For applicants to the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals under 24 CFR part 882, subpart H, the documentation required in paragraph (h)(1) of this section must be provided to the processing entity within 90 calendar days from the date of admission into the program. The processing entity shall grant an extension of one additional 90-day period if the processing entity, in its discretion, determines that the applicant's failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the applicant. If, upon expiration of the provided time period, the individual fails to produce a SSN, the processing entity shall follow the provisions of Sec. 5.218.

(i) *Rejection of documentation.* The processing entity must not reject documentation referred to in paragraph (g) of this section, except as HUD may otherwise prescribe through publicly issued notice.

- 3. Amend Sec. 5.218 by revising paragraphs (a), (b) and (c) to read as follows:

Sec. 5.218 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.

(a) *Denial of eligibility of assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an assistance applicant or individual owner applicant in accordance with the provisions governing the program involved, if the assistance or individual owner applicant does not meet the applicable SSN disclosure, documentation, and verification requirements as specified in Sec. 5.216.

(b) *Denial of eligibility of entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved; if:

(1) The entity applicant does not meet the EIN disclosure, documentation, and verification requirements specified in Sec. 5.216; or

(2) Any of the officials of the entity applicant referred to in Sec. 5.216(d) does not meet the applicable SSN disclosure, and documentation and verification requirements specified in Sec. 5.216.

(c) *Termination of assistance or termination of tenancy of participants.*

(1) The processing entity must terminate the assistance or terminate the tenancy, or both, of a participant and the participant's household, in accordance with the provisions governing the program involved, if the participant does not meet the applicable SSN disclosure, documentation, and verification requirements specified in Sec. 5.216.

(2) The processing entity may defer termination and provide the participant with an additional 90 calendar days to disclose a SSN, but only if the processing entity, in its discretion, determines that:

(i) The failure to meet these requirements was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant; and

(ii) There is a reasonable likelihood that the participant will be able to disclose a SSN by the deadline.

(3) Failure of the participant to disclose a SSN by the deadline specified in paragraph (c)(2) of this section will result in termination of the assistance or tenancy, or both, of the participant and the participant's household.

- 4. Add a new Sec. 5.233 to read as follows:

Sec. 5.233 Mandated use of HUD's Enterprise Income Verification (EIV) System.

(a) *Programs subject to this section and requirements.*

(1) The requirements of this section apply to entities administering assistance under the:

(i) Public Housing program under 24 CFR part 960;

(ii) Section 8 Housing Choice Voucher (HCV) program under 24 CFR part 982;

(iii) Moderate Rehabilitation program under 24 CFR part 882;

(iv) Project-based Voucher program under 24 CFR part 983;

- (v) Project-based Section 8 programs under 24 CFR parts 880, 881, 883, 884, 886, and 891;
 - (vi) Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);
 - (vii) Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013);
 - (viii) Sections 221(d)(3) and 236 of the National Housing Act (12 U.S.C. 1715l(d)(3) and 1715z-1);
- and
- (ix) Rent Supplement program under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).
- (2) Processing entities must use HUD's EIV system in its entirety:
- (i) As a third party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income, in accordance with Sec. 5.236, and administrative guidance issued by HUD; and
 - (ii) To reduce administrative and subsidy payment errors in accordance with HUD administrative guidance.
- (b) *Penalties for noncompliance.* Failure to use the EIV system in its entirety may result in the imposition of sanctions and/or the assessment of disallowed costs associated with any resulting incorrect subsidy or tenant rent calculations, or both.

Sec. 5.236 [Amended]

- 5. In Sec. 5.236(b)(3)(i)(A), remove ``215".

PART 908--ELECTRONIC TRANSMISSION OF REQUIRED FAMILY DATA FOR PUBLIC HOUSING, INDIAN HOUSING, AND THE SECTION 8 RENTAL CERTIFICATE, RENTAL VOUCHER, AND MODERATE REHABILITATION PROGRAMS

- 6. The authority citation for part 908 continues to read as follows:

Authority: 42 U.S.C. 1437f, 3535d, 3543, 3544, and 3608a.

- 7. Revise Sec. 908.101 to read as follows:

Sec. 908.101 Purpose.

The purpose of this part is to require Public Housing Agencies (PHAs), including Moving-to-Work (MTW) PHAs, that operate Public Housing, Indian Housing, or Section 8 Rental Certificate, Housing Choice Voucher (HCV), Rental Voucher, and Moderate Rehabilitation programs to electronically submit certain data to HUD for those programs. These electronically submitted data are required for HUD forms: HUD-50058, including the Family Self-Sufficiency (FSS) Addendum. Applicable program entities must retain at a minimum, the last three years of the form HUD-50058, and supporting documentation, during the term of each assisted lease, and for a period of at least 3 years from the end of participation (EOP) date, to support billings to HUD and to permit an effective audit. Electronic retention of form HUD-50058 and HUD-50058-FSS and supporting documentation fulfills the record retention requirement under this section.

APPENDIX 2 – HISTORY OF THE RENT AND INCOME DETERMINATION RULE

- [Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System—Amendments; Final Rule](#) (December 29, 2009, Docket No. FR-5351-F-02)
- [HUD Notice H 09-20 on instructions to O/As about using EIV data to verify income and employment and using reports and data in EIV](#) (December 7, 2009)
- [NAHMA’s Comments on HUD’s Rent and Income Determination Rule](#) (November 16, 2009)
- [EIV Rules of Behavior for People Who Do Not Have Access to EIV but Who Use EIV for Certification](#) (September 22, 2009)
- [Refinement of Income and Rent Determination Requirements, Final Rule: Delay of Effective Date to January 31, 2010](#) (FR-4998-F-05, August 28, 2009)
- [EIV FAQ's](#) (July 31, 2009)
- [Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Delay of Effective Date to Sept. 30, 2009](#) (FR-4998-F-04, March 27, 2009)
- [NAHMA's Comments on Proposed EIV Delay](#) (March 13, 2009)
- [Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Proposed Delay of Effective Date](#) (FR-4998-N-03 , February 11, 2009)
- [Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs; Final Rule](#) (FR27ja09-4, January 27, 2009)
- HUD has posted several EIV resources, including instructional webcasts, EIV user guides, etc. to its website at <http://www.hud.gov/offices/hsg/mfh/rhiip/eiv/eivhome.cfm> .

APPENDIX 3: MOR FINDINGS AFTER EIV BECOMES MANDATORY

Source: Enterprise Income Verification (EIV) 8.1.2/9.0 Instructional Course, December 2009, HUD slide presentation pages 310-312

<http://www.hud.gov/offices/hsg/mfh/rhiip/eiv/training/eivpresentationdec2009.pdf>

Completing MOR Report After EIV Becomes Mandatory What is considered a MOR Finding? (Mandatory EIV Use)

1. O/A does not have access to EIV
2. O/A is not using EIV for recertifications effective June 1, 2010
3. Missing/incomplete EIV documents as listed on the Addendum C. (Email HUD Headquarters immediately to Terminate the coordinator's/user's access at the following address: mf_alert@hud.gov)
4. . Rules of Behavior for non-system users missing where applicable
5. EIV data being shared with other entities, e.g., state officials monitoring tax credit projects, Rural Housing staff monitoring Section 515 projects, or Service Coordinators
6. EIV data not kept secure
7. O/A has not updated Policies and Procedures to include EIV use
8. O/A has not updated Tenant Selection Plan to include use of Existing Tenant Report
9. EIV Income Reports are not in tenant files as third party verification
10. Tenant files that do not have documentation to support EIV discrepancy resolution
11. O/A is not reviewing New Hires Report
12. Unresolved Failed Verification and Pre-screening Discrepancies
13. Deceased Tenant Report has not been reviewed and/or errors corrected
14. Multiple Subsidy Report has not been reviewed and/or errors corrected
15. O/A is not following HUD's record retention requirements
16. Missing/Incomplete form HUD-9887
17. O/A is not providing tenants with the EIV & You brochure at move in and recertification
18. O/A is sharing access IDs and passwords