

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

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Ethnicity and Race Data Collection

Effective Date or Deadline

March 18, 2003

Background

Under direction from the Office of Management and Budget (OMB), federal agencies have changed the reporting standards for ethnic and racial data. According to a June 3 letter sent by HUD, “the principal objective of the revised standards is to enhance the accuracy of the demographic information collected by the Federal Government.” Among the requirements of the new standards are that “. . . agencies must offer individuals the opportunity to select one or more races when reporting information on race in Federal data collections.”

As it pertains to subsidized multifamily housing, the most noticeable (and worrisome) aspect of the new policy requires the ethnic and racial data to be collected through self-certifications by the head and co-head of the household, rather than by the owner/agent’s observation. On March 18, HUD issued a memo with instructions for collecting data on ethnicity and race, as well as a “format” to use when having tenants self-certify this data. The format had no official HUD insignia, no HUD form number, and no OMB control number.

Then on April 10, HUD’s Office of Administration published on HUDCLIPS an official, OMB-approved form (form HUD-27061), which was included as part of the 2003 SuperNOFA. HUD-27061 significantly differs from the March 18 “format.” HUD-27061 collects aggregate ethnic and racial data. According to the accompanying instructions, the form “is intended to be used by two categories of respondent: (1) applicants requesting funding from the Department of Housing and Urban Development (HUD); and (2) organizations which receive HUD federal financial assistance that are required to report race and ethnic information.” NAHMA is unclear about the meaning of the second of the intended uses and is continuing to seek guidance from HUD.

On April 18, NAHMA sent a letter through its attorney to HUD expressing its concerns on the conflicting forms and incomplete guidance issued by the agency in March and April. The letter requested that the new ethnicity and race data collection requirement “be put in abeyance until there has been time to clear up the ambiguities surrounding its implementation, and to ensure that it is consistent with statutory requirements.”

HUD responded to NAHMA’s request on June 3. The response provided some positive clarifications, but it also left other outstanding issues unresolved and raised new concerns. On a positive note, the letter provided written guidance on how to comply with the requirement when tenants refuse to self-certify. The HUD letter stated, “There is no penalty for persons who do not wish to complete the form. Owners and agents should not complete the form on behalf of the applicant/tenant. For the record, a note may be placed in the applicant/tenant’s file indicating their desire not to complete the form.” The key issue which was unresolved pertained to whether the information collection was required on applicants, or simply on approved new tenants and those already in place. An issue of new concern is precisely how the Office of Housing intends to use form HUD-27061 for this information collection. The HUD letter stated that the Office of Housing received permission to use Form HUD-27061 (instead of the unofficial “format”) to gather ethnicity and race information. The letter states a notice would be “sent to HUD field offices, contract administrators, owners and agents, advising owners and agents to use the new departmental form. Until the notice has been issued, owners and agents are advised to use the format that was attached to the March 18, 2003 memorandum.”

Meanwhile, on June 13, HUD’s Office of Administration published notice in the Federal Register that it was putting Form HUD-27061 through regular approval procedures. Originally the form was issued through fast-track approval. Since it expires Aug. 31, 2003, the form must now go through the regular Paperwork Reduction Act process.

Finally, at the recent TRACS Industry Meeting on July 28-29, 2003, the policy and software complications raised by this data collection were discussed. The audience was advised by key HUD staff that there is some ambiguity about whether this information must be collected on all applicants. HUD staff told industry representatives, contract administrators, and software vendors in attendance, “in absence of instructions or clarification” the most appropriate time for collecting this information is at lease signing for new tenants and at recertification for in-place tenants. (DISCLAIMER: THIS REPRESENTS THE OPINION OF ONE KEY HUD STAFF PERSON, IS NOT LEGAL ADVICE, AND IS NOT FORMALLY ISSUED GUIDANCE FROM THE DEPARTMENT.) The audience was also advised TRACS would have to be significantly changed to implement the new reporting requirements. Until TRACS is updated, and further guidance is issued, the audience was advised to “keep doing what you’re doing” with TRACS.

Summary

This data collection is part of your management review, and contract administrators will be checking your files for this information.

To date, NAHMA's understanding of this new requirement follows:

1. It is mandatory for owners/ agents to offer the opportunity to self-certify ethnicity and race to the head and co-head of household
 - a. Parents or guardians are to complete the self-certifications for minors
2. The opportunity must be offered "at application or at lease signing" for new tenants
3. The format must be completed for new tenants "at application or at lease signing"
4. In-place tenants must have the opportunity at recertification
5. Staple the completed documents together for the household and place them in the household's file
6. There is no penalty for tenants who do not self-certify their ethnicity and race
7. Owners / agents should NOT complete the format from self-observation for tenants who refuse to self-certify their ethnicity and race
 - a. Place a note in their file indicating they declined to self-certify. NAHMA believes it is advisable to have the tenants sign and date the note. This will indicate that you have complied with the requirement to offer the tenant the opportunity for self-certification.

It is HUD's intention to have data based on the self-certification reported in TRACS. Discussions among HUD staff and software vendors are currently underway regarding how TRACS must be modified to report ethnic and racial data. Until TRACS updates are completed, which could take 18 months, owners and agents have been advised to continue operating under current reporting practices with TRACS, but to keep the paper copy format in the tenants' files.

Issues of Concern to NAHMA

NAHMA remains concerned about the substance of this policy, the potential for fair housing complaints and lawsuits it carries, as well as the inconsistent and incomplete direction from HUD in implementing it.

- 1. NAHMA is extremely concerned that this data collection will foster the impression of discrimination and result in unsupported discrimination complaints.**

This concern becomes especially heightened if the data collection is extended to applicants. Applicants who are not accepted as tenants may file complaints alleging their rejection was based on their ethnicity and race.

Even if the data collection is reserved for new and in-place tenants, many people are sensitive about these types of questions. Questions regarding ethnicity and race are often considered inappropriate and offensive.

Owners and agents should not be put in the position of potentially having to defend themselves for complying with a government mandate—especially when HUD has not issued an official form to collect this information on individual tenants, and the instructions for collecting the information are vague.

2. With the release of the new 4350.3 occupancy handbook, a key question remains as to whether this data collection may be limited to new and in-place tenants.

There appear to be inconsistencies with the guidance previously issued by the HUD Office of Housing and the new 4350.3 handbook. It is clear that the recertification is the proper time to collect this data for in-place tenants. However, there are very different implications for requiring the actual collection of this data at the application interview (which is a collection on applicants) as opposed to collecting it at lease signing (on approved new tenants). NAHMA is particularly concerned about the sensitive nature of this type of data and this type of questioning, which (in its members' experience) tenants will find to be offensive and suspicious. NAHMA adamantly opposes any requirement for owners and agents to collect this information on applicants.

- a. The initial March 18 memo issued by the Office of Housing included seemingly contradictory statements.
 - i. Page 1, Paragraph 2, 3rd Sentence reads, “Owner/agents must offer the opportunity to the head and co-head of each household to ‘self certify’ *during the application interview.*” (Italics added.)
 - ii. Page 2, Paragraph 1, 2nd Sentence reads, “Owners/agents are now required to have applicants complete and sign the attached format *at application interview or lease signing.*” (Italics added.)
- b. HUD’s June 3 response to a letter sent by attorney Art Hessel on NAHMA’s behalf seemed to offer flexibility to limit this collection to approved tenants.
 - i. Page 1, Paragraph 3, 2nd & 3rd Sentences read, “As indicated in the March 18, 2003 memo. . . Owners and agents are required to offer the applicant/tenant the option to complete the form. *The form must be completed at application or at lease signing.*” (Italics added.)
- c. With the release of the new 4350.3 occupancy handbook, the matter of when this information must be collected has been further complicated, and appears to be inconsistent with previous guidance on the data collection.
 - i. Page 2-9 , Chapter 2, Section 1, part 2-11, paragraph A.2 reads, “For subsidized multifamily housing, HUD requires owners to gather data about the race and ethnicity of *applicants and tenants* so that HUD can easily spot possible discrimination, track racial or ethnic concentrations, and focus enforcement actions on owners with racially or ethnically identifiable properties. . . Ethnicity and Race of applicants and tenants is

determined by self certification rather than an observation of the owner.”
(Italics added.)

- ii. Page 4-29, Chapter 4, Section 3, part 4-14, paragraph B.1 recommends that a written application form “should include,” among other characteristics, “race/ethnicity of head of household.”

3. Instructions on implementing this data collection are vague; vague instructions will lead to inconsistent interpretations by contract administrators.

Contract administrators are already monitoring compliance with this information collection during management reviews. It is incumbent upon HUD to issue clear, consistent guidance on all aspects of this mandate—both policy and technically related—which pertain to all of HUD’s programs.

Additionally, NAHMA members have noted reporting of ethnic and racial information is being required under the HOME and Section 42 program as well. Different forms are being used to collect this information.

4. Further guidance is necessary regarding how owners and managers should enter the ethnicity and race information in TRACS when tenants refuse to self-certify.

Owners and agents currently report this information in TRACS by observation. The March 18 memo indicates HUD’s intention to have self-certifications reported in TRACS. In cases where the tenant refuses to self-certify, the Department will need to provide guidance as to whether the manager should report this information in TRACS by observation as in current policy, or whether a new “refused to self-certify” selection will be available on TRACS. Furthermore, modifications will be necessary to allow for reporting of multiple racial categories.

At the recent TRACS Industry Meeting on July 28-29, 2003, the policy and software complications raised by this data collection were discussed. HUD has acknowledged implementing this mandate through TRACS will require major changes to the data model, format, and field size.

5. It is not clear how the Office of Housing will use form HUD-27061 for tenant self-certification.

If the Office of Housing intends to have owners and managers collect ethnicity and race data with this form, HUD-27061 and instructions will have to be modified. The form and instructions pertain to **aggregate** reporting and ethnic and racial data. As currently written, it is not designed for data collection on individual tenants and households.

NAHMA is aware that HUD-27061 is going through Paperwork Reduction Act approval. We do not know whether the form will in fact be altered in a way that makes it an appropriate and usable vehicle for data collection at the household level.

Positive Aspects of This Policy/Proposal

NAHMA believes collecting the required information from individual tenants and their households with an official HUD form is a far more preferable alternative to the unofficial “format.” NAHMA has urged the Department for some time to issue an official OMB-approved form to collect this data. An official HUD form would give us credibility with tenants who are suspicious of this information collection (and fear it will be used for discrimination) that we are adhering to an actual, existing HUD policy. We appreciate that the Office of Housing has asked for permission to use an official OMB-approved form for this data collection. We caution, however, that the form must be usable for the stated purpose. As the form HUD-27061 and accompanying instructions are currently written, they are not applicable for collection of ethnic and racial information on individual tenants.

NAHMA’s Position

NAHMA understands that this data collection originated from an OMB mandate. **Nevertheless, we strongly, adamantly, and unequivocally object to any requirement to collect this sensitive data on applicants.** Such a requirement unfairly exposes owners and managers to fair housing complaints and/or lawsuits from tenants whose applications are rejected. As the situation currently stands, some NAHMA members have reported their companies are taking extraordinary measures to demonstrate to tenants that collecting this data is a HUD mandate. Furthermore, collection of the information on applicants, rather than approved tenants, places an additional administrative burden on owners/ managers. Although NAHMA’s preference would be for the Administration to rescind this new requirement altogether, it is our sincere hope that HUD will clarify the *requirement* to collect the self-certification of ethnicity and race information applies only to tenants.

It is NAHMA’s position that HUD should issue an official, OMB-approved form to collect this information on individual tenants. Although we continue to believe this data collection is bad public policy, an official OMB-approved form would at least give some legitimacy to the collection. This form should also include an option in which the *tenant*, rather than the owner / agent, could indicate his or her refusal to self-certify the requested ethnic and racial information. **Furthermore, we believe this official form should be applicable to all housing programs to minimize the administrative burden on managers with mixed-subsidy properties.**

Per our previous correspondence to HUD, we maintain that the requirement to collect this information should be put in abeyance until the ambiguities surrounding its implementation are resolved. Recognizing that HUD has no intention of suspending this requirement, we believe it is incumbent on the Department to immediately issue clear and consistent guidance.

NAHMA continues to believe this information collection is unnecessary, burdensome, and intrusive for tenants and property management staff alike.

That said, NAHMA will continue to advocate for clear guidance on complying with this policy, minimizing the administrative burden for managers, and lessening the intrusiveness of this data collection for tenants.