



400 North Columbus Street
Suite 203
Alexandria, VA 22314
(703) 683-8630
(703) 683-8634 FAX
www.nahma.org

November 16, 2009

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 Seventh Street, SW
Room 10276
Washington, DC 20410-0500

**RE: Docket No. FR-5351-P-01
Refinement of Income and Rent Determination Requirements in Public and Assisted
Housing Programs: Implementation of Enterprise Income Verification**

Thank you for the opportunity to comment on the proposed changes to Final Rule, "Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs," which was published January 27, 2009. NAHMA applauds HUD's decision to revisit problematic aspects of the Final Rule before it takes effect on January 31, 2010.

The Department proposes changes to the Final Rule which would:

- Defer changes to the definition of annual income to separate rulemaking that may address broader rent and income reforms;
- Defer any changes to HUD's noncitizen regulations, which, given the importance of this issue, should be addressed by separate rulemaking; and
- Simplify Social Security Number (SSN) disclosure and verification processes, to the extent feasible, and consistent with maintaining confidentiality of these processes.

NAHMA supports deferring changes to the noncitizen rules. Our March 13, 2009 comments in reference to the proposed 60-day delay in the Final Rule described a number of concerns related to the non-citizen provisions. We concur with HUD's proposal to withdraw the January 27, 2009 amendments to the noncitizens regulations, and leave in place the requirements codified in 24 CFR part 5, subpart E, prior to revision by the Final Rule.

Similarly, NAHMA agrees with HUD's decision to withdraw the amended definition of annual income. As written, the Final Rule created a great deal of confusion as to when income should be determined by "projecting-forward" the tenant/applicant's current income or by "looking back" at past income received. NAHMA's previous comments expressed serious concerns that HUD's revised annual income definition, with its new historical income calculation method, would create unnecessary confusion about which method to use. NAHMA appreciates that HUD reconsidered this part of the Final Rule and decided to maintain the definition of annual income as it was prior to the January 27, 2009 Final Rule amendments.

The proposed rule would also make noteworthy improvements in the processes for disclosing and verifying social security numbers. First, it makes an important distinction in the applicability of the SSN

PROTECTING THE INTERESTS OF AFFORDABLE HOUSING PROPERTY MANAGERS AND OWNERS

disclosure requirements. As NAHMA requested in our March 13 comments, the rule would clarify that the disclosure requirements are inapplicable to individuals who do not contend eligible immigration status under HUD's noncitizens regulations. NAHMA appreciates this clarification. We are also pleased by HUD's acknowledgement of the unintended consequences these requirements could have on elderly residents. "Grandfathering" existing elderly residents (by exempting current participants 62 years of age or older as of January 31, 2010) 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). NAHMA agrees with HUD's statement, "The proposed changes would reduce administrative burden[s], and enhance privacy protections for individuals and households who have already disclosed valid SSNs, as well as reduce the administrative burden for the covered housing providers that must collect this information."

The revised rule lists specific types of documentation participants must submit to verify their SSNs. Acceptable documentation includes:

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

Supplementary information provided in the *Federal Register* explains that HUD sought to address concerns about delays in issuing the SSN card and to reduce administrative burdens by authorizing reliance on SSN documentation from other federal or state government agencies. However, NAHMA is extremely concerned by the Department's statement, "...HUD notes that such SSN data [from other agencies] provided by participants would still be subject to verification by PHAs and owners and management agents through use of the EIV [Enterprise Income Verification] system." (See *Federal Register*, October 15, 2009, page 52933). The Department has instructed multifamily property owners and management agents to use EIV only during the recertification process for program participants. In the case of *applicants* for assisted housing, owners and agents *do not have the ability to use the EIV system to verify the SSN documentation from other agencies. HUD would have to modify its interagency agreements governing use of the EIV data in order to permit housing operators to use this verification option for applicants who are not yet participants in the assisted housing programs.*

NAHMA remains concerned about HUD's decision to *require* multifamily housing operators to use EIV. The proposed rule provides no further implementation deferrals beyond January 31, 2010. After this date, housing providers who do not use the EIV system in its entirety for third-party verification of tenant employment and income information may be subject to sanctions, assessment of costs associated with incorrect subsidy or rent determinations, or both. Additionally, NAHMA remains concerned that owners and agents may only use EIV during mandatory recertifications of family composition and income, but not when the family applies to participate in the housing programs. NAHMA encourages HUD to consider pursuing changes to its interagency agreements which would allow EIV to be used as a third-party verification tool during the initial certification of an applicant's income and family composition. Although NAHMA agrees that EIV is an effective tool to discover unreported income, we strongly urge 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.

Thank you in advance for considering these comments. NAHMA is pleased that HUD has already proposed significant improvements to the Final Rule after reviewing previously submitted public comments. Our members look forward to working with the Department to make further constructive changes where necessary.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris Cook". The signature is fluid and cursive, with the first name "Kris" being more prominent than the last name "Cook".

Kris Cook, CAE
Executive Director