WORKING WITH HUD

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BED BUGS
As Special Attention of

All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Operations Officers
All Directors of Project Management
All Field Counsel

Notice H 2012-5

Issued: April 23, 2012

Expires: This notice remains in effect until amended, revoked, or superseded

Cross References: Housing Notice 2011-20

SUBJECT: Guidelines on Addressing Infestations in HUD-insured and Assisted Multifamily Housing

I. Purpose

This Notice supersedes Housing Notice 2011-20, “Guidelines on Bed Bug Control and Prevention in HUD Insured and Assisted Multifamily Housing.” Readers seeking guidance on the subject of bed bug infestations should instead refer to this Notice, which provides updated information to prevent and address infestations, including but not limited to bed bugs, insects, and all manner of vermin. HUD is providing guidance to Owners, Management Agents (O/As) and residents of HUD Multifamily insured and assisted properties to remind all parties of the importance of prevention, identification, and treatment of infestations in HUD-assisted and HUD-insured rental housing. The Department has received numerous inquiries and comments from the industry and HUD residents seeking clarification and information on appropriate steps to address infestations in Multifamily properties. This Notice provides information and references to best practices regarding the prevention and control of infestations. It also reaffirms existing program requirements with regard to infestations.

II. Background

Pursuant to 24 CFR Part 5, Subpart G, HUD housing must be decent, safe, sanitary and in good repair. Owners of HUD-insured or assisted housing must maintain such housing in a manner that meets physical condition standards. In accordance with project Regulatory Agreements and Section 8 HAP Contracts, the housing must have no evidence of infestation. HUD monitors Owners and Agents (O/As) to ensure that housing meets physical condition standards enumerated in 24 CFR 5.703. This includes providing guidance aimed at preventing and addressing infestations.
Many residents and O/As have contacted HUD to seek guidance on infestations. Of particular concern is the growing problem of bed bugs. According to the United States Environmental Protection Agency (EPA), bed bug populations have recently increased dramatically. HUD is working closely with other federal agencies to develop and share best practices for preventing, identifying and controlling bed bugs.

III. Applicability

This Notice provides guidance to the following types of projects:

A. Properties assisted with Section 8 Project Based Rental Assistance, Rent Supplement or Rental Assistance Payment (RAP) contracts.

B. Properties with active Section 202 Direct Loans, Section 202/162, Section 202 and 811 Capital Advances, and Section 202 Senior Preservation Rental Assistance Contracts or Section 811 Project Rental Assistance demonstration funding.

C. Properties with active FHA insured first mortgages under Sections 207 pursuant to 223(f), 221(d)(3), 221(d)(4), 221(d)(5), 231, 213 or 236.

Certain provisions of this Notice are applicable only to assisted properties, as specified in various sections of the Notice below. The Notice does not supersede existing lease provisions that comply with state and/or local landlord/tenant laws and that have been approved by HUD (where such approval is required).\(^1\) All parties should refer to the property lease executed between the tenant and the O/A, and the property House Rules, for details on Owner and resident rights and responsibilities related to infestations and housing physical condition standards. Certain assisted properties\(^2\) are also subject to provisions of the HUD Model Lease for Subsidized Programs (Family Model Lease) (Form HUD-90105-A, HUD-90105-B, HUD 90105-C and HUD-90105-D) in HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs.

IV. Prevention of Bed Bug Infestations

Of particular concern for Multifamily O/As, as well as project residents, is the resurgence of bed bugs, which can cause discomfort and anxiety for residents and which can spread quickly. The ideal approach to bed bug infestations is to prevent them from occurring in the first place. Federal agencies, such as EPA and HUD, are working in tandem to develop and share recommendations to prevent infestations.

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\(^1\) For unassisted O/As, this Notice does not supersede state and local landlord/tenant law related to lease enforcement, housing habitability, and cure rights or damages.

\(^2\) Section 221(d)(3) BMIR, Section 236, Section 8 New Construction, Section 8 Substantial Rehabilitation, Section 8 State Agency, RHS 515 with Section 8, Section 8 Loan Management Set-Aside (LMSA), Section 8 Property Disposition Set-Aside (PDSA), Rental Assistant Payment (RAP), and Rent Supplement projects are subject to the provisions of the Family Model Lease.
HUD encourages Multifamily O/As to develop an Integrated Pest Management Plan (IPM) to focus on preventing infestations. Such plans describe the ongoing efforts the property management will take to prevent and respond to pests. For more detail on IPMs generally, please see the online guide at http://www.stoppests.org. The information below pertains specifically to bed bug infestations.

According to the EPA, principles of IPM for bed bugs include:

- Raising awareness through education on prevention of bed bugs;
- Inspecting infested areas, plus surrounding living spaces;
- Checking for infestations on luggage and clothes when returning home from a trip;
- Reducing the number of secondhand items brought into units and looking for bed bugs or signs of infestation on secondhand items before bringing the items home;
- Correctly identifying the pest;
- Keeping records – including dates when and locations where pests are found;
- Cleaning all items within a bed bug infested living area;
- Reducing clutter where bed bugs can hide;
- Eliminating bed bug habitats;
- Physically removing bed bugs through cleaning;
- Using pesticides carefully according to the label directions; and,
- Following up on inspections and possible treatments.

In addition to or as part of an IPM program, Multifamily O/As are strongly encouraged to take the following steps to prevent bed bugs:

- Provide training for staff to identify bed bugs, and to perform ongoing prevention actions as outlined in the IPM. When a community is at high risk for bed bugs (for example, if the community has experienced prior infestations), periodic building inspections are recommended.

- Actively engage residents in efforts to prevent bed bugs. Education and involvement of project residents is a critical component of IPM for bed bugs. Bed bugs may often go undetected and unreported, because they are active at night, and tenants may not be aware of their presence. O/As may wish to hold workshops for tenants to teach them to identify bed bugs, to create unfriendly environments for pests, and to report suspicions of bed bugs as soon as possible.

- Provide orientation for new tenants and staff, and post signs and handouts.

In addition, tenants should immediately report the suspicion of infestations in housing units or other areas of the property. Early reporting allows the pests to be identified and treated before the infestation spreads. Tenants are the first line of defense against infestations and should cooperate to create living environments that deter pests. This includes reducing unreasonable amounts of clutter that create hiding places for pests and deter treatment.
More information on bed bug prevention may be found by accessing the following websites:  

- **Healthy Homes Training:** What’s Working for Bed Bug Control in Multifamily Housing?: Reconciling best practices with research and the realities of implementation. [http://www.healthyhomestraining.org/ipm/NCHH_Bed_Bug_Control_2-12-10.pdf](http://www.healthyhomestraining.org/ipm/NCHH_Bed_Bug_Control_2-12-10.pdf).

- **National Pest Management Association Bed Bug Hub:** [http://pestworld.org/pest-world-blog/the-bed-bug-hub-one-stop-shop-for-bed-bug-information](http://pestworld.org/pest-world-blog/the-bed-bug-hub-one-stop-shop-for-bed-bug-information)

- **National Pest Management Association Best Practices Website:** [http://www.bedbugbmps.org](http://www.bedbugbmps.org)

- **IPM Curriculum and Blog:** [http://www.stoppests.org](http://www.stoppests.org)

- **Environmental Protection Agency:** [http://www.epa.gov/pesticides/bed-bugs/](http://www.epa.gov/pesticides/bed-bugs/)

V. **Addressing Infestations**

The O/A should respond with urgency to tenant reports of infestations. The O/A should endeavor to take appropriate action within a reasonable time period. However, tenants are advised that pest inspections and, if necessary, treatment, may take time to schedule, particularly for recently resurgent pests such as bed bugs, for which it may be difficult to find trained specialists to perform inspections and conduct treatments.

Residents should fully cooperate with the O/A’s efforts to identify and address infestations. This tenant cooperation is shown to expedite the control of infestations. Cooperation includes allowing the O/A to enter the unit to perform inspections and treatments, allowing pest treatments to occur, following the pest treatment protocol, and removing infested furniture or other items from common areas such as hallways or community rooms.

Residents are advised that some infestations, including bed bugs, require multiple treatments over the course of several weeks. Generally, relocation from units is not necessary for effective pest treatment. However, if reasonable temporary relocation is necessary, the O/A may request withdrawals from available project funds (which may include Reserve for Replacement, project income, or Residual Receipts, if authorized by HUD), as described below in Section VI, for those days when treatment is actively occurring that may render the unit uninhabitable. All withdrawals of this type must be approved by the Hub/PC Director or designee. Any temporary relocation must be carried out in accordance with applicable civil rights laws, including, but not limited to, Title VI.

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of the Civil Right Act of 1964 and Section 504 of the Rehabilitation Act of 1973. For example, when persons with disabilities are temporarily relocated, they must be placed in housing that provides, at a minimum, the same accessibility features as the housing in which they currently reside. Additionally, the O/A must ensure the right of return for tenants who have had to be temporarily relocated while the treatment is being performed.

VI. Project Resources

An O/A may contact HUD to request project resources for control of infestations. An O/A may use available operating funds to pay for activities to prevent and/or treat infestations. When other sources of funds are not available or sufficient, the Hub/PC Director may honor requests to reimburse Owners for infestation treatment from the Reserve for Replacement account, or, if authorized, the Residual Receipts account. The releases should follow the processes outlined in HUD Handbook 4350.1, Multifamily Project Servicing, Chapters 4 and 25. Owners may make advances (loan without interest) when no reserves are available. With prior HUD approval, Owners may repay the advances from project resources as discussed in HUD Handbook 4350.1.

For assisted housing projects, HUD may consider use of rental assistance to pay reasonable and necessary project expenses, such as an increased pest control line item in the project’s operating budget, if the Section 8 Housing Assistance Payments (HAP) contract allows for budget-based rent setting in accordance with the Section 8 Renewal Policy Guide.

Owners of assisted properties are advised that any rental assistance received under Section 8, Rent Supplement or RAP cannot be used to reimburse residents for the cost of any additional expense to the household, such as purchase of new furniture, clothing or cleaning services. Assisted project Owners’ requests for tenants to pay the costs of infestation treatment must be in accordance with the provision for tenant payment of damages or noncompliance as required in the Family Model Lease.

VII. Recurring Infestations

Many properties face recurring infestations. O/As may take initiative to offer protective tools to residents to help safeguard properties from recurrences. To prevent pests from entering a Multifamily property, O/As may voluntarily offer to inspect tenants’ furniture before move-in. Where there is an approved (for Assisted Owners) lease provision that complies with state and/or local landlord/tenant law, O/As may require appropriate treatment of furniture upon tenant move-in, or when a tenant moves furniture into the apartment. These services or products are to be offered at the Owner’s expense, or may be paid from project operating funds if available.

All Owners (of assisted and unassisted properties) may pursue remedies provided in the lease agreement and in accordance with state and local rental law. Assisted Owners must follow additional guidelines including occupancy requirements for assisted housing, and must adhere to all HUD and state and local landlord/tenant laws before taking action to deny tenancy or remove residents for causes related to infestations. For O/As of assisted properties, the Family Model Lease provides remedies related to damages or noncompliance. Many O/As have proposed lease addenda
related to infestations. As detailed in HUD Handbook 4350.3, Section 6-9, Lease Addenda in assisted properties may not conflict with the Family Model Lease. HUD reserves the right to review and approve Lease Addenda for assisted properties, for example to ensure that tenant payment provisions in proposed Addenda do not exceed the remedies for damages or noncompliance provided in the Family Model Lease.

VIII. Responding to Inspection Findings

Infestations should be addressed when reported by staff, tenants or the Real Estate Assessment Center (REAC), or if an audit by the HUD Office of the Inspector General identifies possible infestation.

Presently, REAC inspectors will only deduct points if there is the “presence of rats, or severe infestation by mice or insects such as roaches or termites. The following deficiencies can be noted: 1) Insects and 2) Rats/Mice/Vermin.” If there is no evidence of infestation (i.e. there are baits, traps, and sticky boards with no presence of insects or vermin) inspectors are instructed not to record this as a deficiency. If evidence is identified, the infestation may be cited as a deficiency.

As per Inspector Notice No. 2010-01, “the presence and/or treatment of bed bugs will not be scored in the UPCS inspection.” However, inspectors now ask the O/A to identify any units and/or buildings that are infested before the inspection begins. If bed bugs are reported, the inspector will record the units and/or buildings affected in the comment section of the Physical Inspection report.

Because bed bug infestations are on the rise, HUD staff will take additional steps to monitor and track reports of bed bug infestation and treatments of such infestations. When bed bugs are reported by the Owner/Agent at the time of inspection or if the Inspector notes the presence of bed bugs, REAC sends a “Bed Bugs Reported” email to the Hub/Program Center Director. HUD staff must take the following steps upon receipt of the “Bed Bugs Reported” email from REAC (regardless of the PASS score the property receives) or if bed bugs are cited as a deficiency within the REAC report, or if bed bugs are reported by the O/A, project residents, the Performance Based Contract Administrator, or an OIG audit:

- Enter the bed bug information on the Problem Statement screen in the Integrated Real Estate Management System (iREMS).

- If bed bugs were identified by REAC, send the attached letter (Attachment 1) to the Owner regardless of the score of the REAC Physical Inspection.

- Advise the Owner to describe what actions were taken or will be taken to eradicate the infestation.

- Advise the Owner to inform HUD of the response to the infestation, and to inform HUD if and when the problem has been completely eradicated.

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4 HUD Physical Inspection Program—Chapter 3: UPCS Definitions Training—Health & Safety
- Release funds from Reserve for Replacement or Residual Receipts accounts if requested and if such funds are available and authorized.

- Continue to enter all related information into the Problem Statement screen in iREMS; and,

- Report any significant developments or problems regarding a bed bug infestation to Headquarters, Office of Asset Management.

If you have questions, please contact your Desk Officer in the Office of Asset Management.

__________________________
Carol J. Galante
Acting Assistant Secretary for Housing –
Federal Housing Commissioner

Enclosures
Property Owner  
Address

SUBJECT: Bed Bugs  
Property Name: __________________________

Dear Owner:

The [Hub Name] Multifamily Hub has received notification from the Real Estate Assessment Center (REAC) that during the physical inspection of your property performed on [Date], the inspector indicated that bed bugs were reported present at the property. The units/buildings below were identified as being infested with bed bugs:

Within 5 days of the date of this letter, please inform your Project Manager of the actions you are taking for bed bug control. This information should include the method of treatment used (or to be used), the timing for treatment(s), and your proposed plan for monitoring and preventing the possibility of future infestation.

If you have any questions, please contact your Project Manager, [Project Manager’s Name], at [Project Manager’s Telephone Number] ext. [Extension]

Sincerely,

_________________________  
Supervisory Project Manager  
Project Management Division
DUNS

REQUIREMENTS
Notice H 2011-01

Issued: January 5, 2011
Expires: January 31, 2012

Special Attention of:

All Multifamily Hub Directors
All Program Center Directors
All Project Owners and Management Agents of Projects with Project-Based Section 8 Rental Assistance Contracts
All Project Owners and Management Agents of Section 202 or 811 Projects with Project Rental Assistance Contracts
All Contract Administrators

SUBJECT: Notice Requiring Owners with Project-Based Section 8 Rental Assistance Contracts or Section 202 or 811 Project Rental Assistance Contracts to Obtain Dun and Bradstreet Numbering System (DUNS) Numbers and to register in the Central Contractor Registration (CCR)

Background

Public Law 109-282, The Federal Funding Accountability and Transparency Act of 2006, requires the creation of a single, government-wide searchable website that is available to the general public and that lists information on recipients of all forms of Federal financial assistance. Rental assistance payments made under Project-Based Section 8 or Section 202 or 811 Project Rental Assistance Contracts are covered by this reporting requirement. The law affects both the legal entity that receives the funds (typically the partnership, association or corporation listed as Project Owner in contract documents) as well as the parent company, if the recipient is owned or controlled by another entity. Beneficiaries of rental assistance (i.e., households receiving rent subsidies) are not covered by this reporting requirement.

Under the law, all Federal agencies are required to report on the amount of Federal assistance provided, as well as the purpose of such assistance and the location of each recipient. The Transparency Act also requires each reporting entity to provide a unique identifying number, and the Office of Management and Budget has decided to use DUNS numbers for this purpose.

HUD has established a regulation at 24 CFR 5.1004 (FR 75 41087) that requires for each obligation of funds, the recipient must have DUNS number and have a valid registration in the
Central Contractor Registration. CCR was established to facilitate the federal government’s compliance with the Prompt Payment Act (Pub. L. 97-177) (31 U.S.C. 3901 et seq.), as amended, and is the primary registrant database for the federal government. CCR collects, validates, stores and disseminates data in support of agency missions, including federal agency contract and assistance awards, and the electronic payment process. HUD believes that codifying the CCR registration requirement will facilitate applicant and awardee use of a single public website which consolidates data on awards made under various types of Federal Financial Assistance, pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Transparency Act) (Pub. L. 109-282) (Transparency Act) and help ensure data quality for grantee information for the USASpending.gov website created in conformance with the requirements of the Transparency Act.

Deadline for Obtaining DUNS Numbers and Registration in CCR

Owners must obtain a DUNS number and have an active, valid registration in CCR within 60 days of the publication date of this Notice and must submit the attached certification to their local HUD office to demonstrate compliance with the requirements of this Notice. At the end of the 60 day period, HUD will run the listing of DUNS numbers received in response to this Notice, against the extract it receives from CCR to ensure compliance. An owner’s failure to obtain a DUNS number and CCR registration within this timeframe may result in the Department’s suspension of housing assistance payments or rental assistance payments. This Notice also requires owners to maintain their CCR registration in order to continue to receive housing assistance or rental assistance payments.

Process for Obtaining a DUNS Number and Registering in CCR

To obtain a DUNS number, Section 8 recipients can use the online web-form process at http://fedgov.dnb.com/webform. For assistance, registrants should call toll free: 866-705-5711 – Press Option 4, Grantee. Grantees in Alaska and Puerto Rico can call toll-free, 800-234-3867. The process of obtaining a DUNS number is free for all entities doing business with the Federal government is free. Responses to web-form submittals online are generally returned within 1-2 business days, the process for obtaining a DUNS number using the telephone should take 10 to 15 minutes. The following information is requested when applying for a DUNS number:

- Legal company name
- Headquarters company name and address
- Trade-style or DBA company name
- Physical address: including city, state and zip code
- Mailing address
- Telephone number
- Contact name and title
- Number of employees at the companies physical location
When requesting a DUNS number be sure to use the Employer/Taxpayer Identification Number (EIN/TIN and the Employer/Taxpayer Name) used when filing a return or making a payment to the Internal Revenue Service (IRS). Organizations should also provide the Zip Code using the Zip Code plus four code (Zip+4). After obtaining a DUNS number, you should wait 24 to 48 hours to register with the Central Contractor Registration (CCR) so that the records can become activated in the Dun and Bradstreet database. If you are not sure of you already have a DUNS number, you can call the toll-free number, select option 4 and ask the operator if you already have a DUNS number at the specified address.

CCR Use of Dun and Bradstreet Information

CCR obtains the following data fields from Dun and Bradstreet: Legal Business name, Doing Business as Name (DBA), Physical Address, and Postal Code (Zip+4). Registrants will not be able to enter or modify these fields in CCR because they are pre-populated from Dun and Bradstreet records. During a new registration, or when updating/renewing a registration in CCR, the registrant has a choice to accept or reject the information provided from the Dun and Bradstreet records. If the registrant agrees with the supplied information, the Dun and Bradstreet data will be accepted into the CCR registrant record. If the registrant disagrees with the Dun and Bradstreet supplied data, the registrant must go the Dun and Bradstreet website at http://fedgov.dnb.com/webform to modify the information contained in the Dun and Bradstreet records before proceeding with the CCR registration. Once the Dun and Bradstreet confirms the updated information, the registrant must revisit the CCR website and accept the Dun and Bradstreet changes. It may take up to 2 business days for Dun and Bradstreet to send modified data to CCR.

CCR EIN/TIN Validation. The Employer/Taxpayer Identification Number (EIN/TIN) and Employer/Taxpayer Name combination you provide in the IRS Consent form is sent to IRS for validation and checked for any debt owed to the federal government. If there are discrepancies in the information provided, the registration will fail validation.

CCR User’s Guide and Help Desk


Future Reporting of DUNS Numbers to HUD

HUD currently expects to modify the reporting format for TRACS to capture the owner’s DUNS number.

Use of Existing DUNS Numbers
Because DUNS numbers are widely used in commercial practice, many current Section 8 and PRAC recipients already have these numbers and do not need to obtain new ones—so long as the existing number is for the entity that actually owns the Section 8 project ("Owner DUNS Number") or the parent company ("Parent DUNS Number"). Dun and Bradstreet will assist companies that require multiple DUNS numbers to accurately reflect their organizational structure, and recommends that these organizations have a single point of contact for controlling DUNS number requests.

Questions regarding this Notice should be directed to Theresa Fields, Office of Housing Assistance Contract Administration Oversight for Multifamily Housing Programs. Ms. Fields’ telephone number is 202-708-2677.

Sincerely,

/s/

David H. Stevens
Assistant Secretary for Housing – Federal Housing Commissioner

Attachment: DUNS Number and CCR Registration Certification
ENTERPRISE INCOME VERIFICATION SYSTEM (EIV)
Get Ready For EIV System Overhauls

Multifamily EIV 9.3 release includes a host of new additions

The U.S. Department of Housing and Urban Development (HUD) released the Enterprise Income Verification (EIV) system update 9.3 on April 28, followed by the Multifamily weekend summarization job on April 29 -- making the release official on May 1. You'll have a wide array of new functionalities to learn in this system update.

CHANGES

User Certification. HUD simplified the user certification process, so that now there's no extra step in the process that had required EIV coordinators to first approve the User Access Authorization Form online when they certify the user. Now, coordinators approve and certify the user request at the same time. This means that:

- You no longer have to submit the form HUD-52676 to the EIV coordinator in the local HUD office;
- Your EIV User Administrator is responsible for electronically requesting the approval of EIV roles to each user, using the system's User Administration function; and
- The EIV coordinator in your local HUD office will approve the requested roles.

Missing Residents. EIV didn't provide income information on residents who are "pending verification" by the Social Security Administration (SSA). Because these "missing residents" created confusion, the new EIV version updates the Identity Verification to provide information on households with SSA verification pending. These residents will appear as "Not Verified," but you will be able to see what income reports are available for these resi-

JAVA Errors. HUD fixed a few JAVA errors in the EIV 9.3 update:
- Viewing income information by HoH, under the "Dual Entitlement" section
- Printing the Existing Tenant Report

NEW

Oath Page. Now contains EIV Rules of Behavior, as well as highlighted acknowledgement and certification statements.

Main Page. Announcements Section now specifies the user certification periods.

By Reexamination Month. Now includes additional search criteria, by form HUD-50058 Action Type (New Admission, Annual Reexam, Interim Reexam, Portability Move-in, Historical Adjustment). You can now generate batch income reports for a specific Action Type. Also, the Summary Reports are now listed alphabetically.

Income Report. Contains a new identity verification status of "Excluded." But HUD's computer matching process won't include the personally identifiable information of Excluded household members.

Identity Verification Report. Failed SSA Identity Test will now include the date SSA confirmed that the information reported on HUD-50058 failed. Also, the failed Pre-Screening Report now excludes household members with a PIC-generated alternate ID whose immigration status is "ineligible non-citizen" and whose assistance is pro-rated.
EIV SYSTEM 9.3 RELEASE

EIV system update 9.3 was successfully released on Saturday April 28, 2012. The Multifamily weekend summarization job was successful on April 29, 2012, and all reports are current as of this date. Below are the new functionalities that have been added to Multifamily EIV.

Any questions related to Multifamily Housing in EIV should be directed to the Multifamily helpdesk at 1-800-767-7588 or by email at mf_eiv@hud.gov.

EIV system changes for the 9.3 release include:

Function

Description

EIV System Access

User Certification

* Removed the step to certify the user after approval of CAAF or UAAF. User Certification now happens when a CAAF or UAAF is approved.

Income Reports

By Head of Household
By Contract Number
By Project Number

* Fixed the discrepancy in decimal amount between the income by head of household and the income by contract and project detail reports.

Verification Reports

Deceased Tenant Report

* Individual month options have been removed leaving only the ability to choose "All" months.

Identity Verification Reports

* Individual month options have been removed leaving only the ability to choose "All" months.
* Number of households represented as Not-Verified (verification in process) is now a clickable link which identifies individuals who have not yet been verified by SSA. The report is arranged by head of household.
System Functionality

Java Errors

* Fixed Java error when displaying Dual Entitlement payment history by head of household or by the SSN link from the summary page.
* Fixed the Java error when printing the Existing Tenant Search report.
INCOME EXCLUSIONS
New Income Exclusions — Your List Just Got Longer

Keep up on these deletions, changes, and additions to exclusions

Get ready for a brand-new list of income exclusions that will change the way you calculate income for housing applicants and tenants. For the first time in more than 11 years, the Department of Housing and Urban Development (HUD) has updated its list of "Federally Mandated Exclusions from Income."

Published in the July 24 Federal Register (Vol. 77, No. 142), the regulation amends, removes, and adds income exclusions, according to Mary Ross of Ross Business Development in Henrietta, GA.

Take These Exclusions Off Your List

Congress repealed certain federally mandated income exclusions, which HUD’s new regulation removes from the list. The following two income exclusions are removed:


HUD also amends one exclusion item to better clarify its applicability to Section 8 programs. This is how the updated item reads now:

* Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under Federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in §237 of Public Law 109-249 applies and requires that the amount of financial assistance in excess of tuition shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109-247).

Add 5 New Exclusions

HUD adds several new items to the list of federally mandated exclusions. These income exclusions include assistance, payments and/or compensation from:

* Any deferred Department of Veterans Affairs disability benefits (received in a lump sum or in prospective monthly amounts).
* The Native American Housing Assistance and Self-Determination Act of 1996, received by or on behalf of a veteran for service-connected disability, death, dependency or indemnity (administered by the Office of Native American Programs).

TOOLKIT

Simplify Income Exclusion Updates With This Checklist

Keep this tool handy to keep your income calculations compliant

With the myriad of income-exclusion changes that you now have to remember, why not make your job a little easier with a simple checklist? Here’s your new list of Federally Mandated Exclusions from Income, pursuant to HUD’s latest regulation.

D The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2038).


D Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c)).

D Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e).
Payments or allowances made under the Department of Health and Human Services' Low-Income Housing Energy Assistance Program (42 U.S.C. 8624(o)).


The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-8).

Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under Federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109-249 applies and requires that the amount of financial assistance in excess of tuition shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109-247).

Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056g).

Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange liability litigation, M.D.L. No. 381 (E.D.N.Y.) (Pub. L. 101-201 and 101-39).


The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q).

Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(1)).

Payments by the Indian Claims Commission to The Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433).

Allowances, earnings and payments to AmeriCorps' participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d)).

Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602).

Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

Any amount received under the School Lunch Act and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplement Food Program for Women, Infants and Children (WIC).

Payments, funds or distributions authorized, established or directly by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774(f(b))).

Payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts as provided by an amendment to the definition of annual income in the U.S. Housing Act of 1937 (42 U.S.C. 1437) by Section 2608 of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 42 U.S.C. 4501).

Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111-269) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101) and administered by the Office of Native American Programs.

A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., United States District Court, District of Columbia, as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291).
LIMITED ENGLISH PROFICIENCY

(LEP)
Stick To The Vital Details For Limited English Proficiency Planning

Focus on quality over quantity, HUD guides.

If your Limited English Proficiency (LEP) program fails to keep all tenants updated on your policies and procedures, the feds will come knocking.

Good news: That doesn't mean you must supply each and every document in all the languages your tenants speak. You must ensure meaningful access to your housing programs and activities by persons with limited English proficiency. The keyword here is "meaningful."

The Department of Housing and Urban Development's LEP guidance instructs you to focus on what will help your residents the most. In this instance, you want quality over quantity, HUD says.

Resource: HUD outlines three different factors to consider in deciding how an affordable housing development should approach the issue of translating documents into other languages.

Decide Which Documents Are "Vital"

Whether or not a document — or the information it solicits — is "vital" depends upon the importance of the program, information, encounter or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.

Consider: You would not generally consider applications for certain recreational activities to be vital documents, whereas applications for housing would be.

HUD realizes that classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services.

Be aware: The lack of awareness that a particular program, right, or service exists may effectively deny LEP persons meaningful access, HUD notes.

Sometimes a document includes both vital and non-vital information, such as when the document is very lengthy. Often, listing the document's name and a phone number for obtaining more information in frequently encountered languages other than English is enough, especially if you send out the document to the general public, making multiple translations unreasonable.

Do this: Translate the part of the document that contains vital information. Include a provision about where to obtain further information in appropriate languages other than English.

Regularly Revisit And Review

The good news is that most federal housing programs have already smoothed out the wrinkles in their LEP plans. But if you haven't dusted off and updated your plan to reflect your current tenants' needs, you could be courting trouble.

Better: On an annual or semi-annual basis, take stock of your policies and procedures to ensure that any new additions are available in the languages your residents need. Determine which vital documents tenants are requesting most and ensure those are offered in languages other than English.

Don't forget: Many LEP persons may not be able to read their native languages, so you should plan to call upon an oral interpreter if necessary.

Examples Of Vital Documents For Translating

/ Consent and complaint forms.

/ Intake forms with the potential for important consequences.

/ Written notices of rights, denial, loss, or decreases in benefits or services, and other hearings.

• Notices of eviction.

/ Notices advising LEP persons of free language assistance. / Leases and tenant rules.

• Applications to participate in an owner's program or activity or to receive recipient benefits or services.
5 Options For Low-Cost Oral LEP Help

*Remember: The type of interpreter you need may change according to the situation at hand.*

Ask any assisted housing owner or agent (OA) and they'll tell you the most pressing Limited English Proficiency (LEP) need is for oral language services, technically termed "interpretation."

For instance, many OAs commonly need interpretation services when applicants come in for the initial interview in the application office, to see a dwelling or apartment, and to sign a lease, notes Al Hester with the St. Paul Public Housing Agency.

Hester also regularly uses interpreters at the annual tenant recertification and in the case of lease violations. "The hardest thing to convey, however — even through a translator — is how rents will be calculated," he says.

**3 Guidelines For Choosing An Interpreter**

In its LEP guidance, HUD stresses that "quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the [operator]." The primary objective in selecting an interpreter is to ensure high quality language service.

*Essential:* HUD does not require formal certification for an interpreter. Instead, the agency states that interpreters should:

1. **Demonstrate proficiency** in and ability to communicate information accurately in both English and in the other language;

2. **Possess knowledge in both languages** of any specialized terms/concepts peculiar to your program/activity and of any specialized vocabulary and phraseology used by the LEP person, including confidentiality and impartiality rules. This includes the ability to understand confidentiality and impartiality rules.

3. **Understand and adhere to their role** as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in court, administrative hearings, or law enforcement contexts).

*Caution:* The interpreter’s competence level must match the importance of the LEP need. For example, you need greater quality and accuracy of language services during a rent calculation discussion than you might for an initial tour of your property.

**Look To These 5 Resources To Find Interpreters**

With that criteria in mind, you have a choice of five basic types of interpreter resources to use:

1. **Hire a Bilingual Staffer.** When you encounter particular languages often, hiring bilingual staff offers one of the best, and often most economical, options. The staffer may be someone who works exclusively as an interpreter, depending on your LEP needs.

2. **Contract for Interpreters.** Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. Note that in addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Hester, for example, developed a contract that he sends out for bid.

3. **Use Telephone Interpreter Services.** Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. Just don’t forget that when you discuss documents, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and address any logistical problems.

4. **Call Upon Community Volunteers.** This option may be particularly useful to provide language access for a recipient’s less critical programs and activities.

5. **Put Family Members or Friends to Work.** You should permit the LEP person to use, at his or her own expense, an interpreter of his or her choosing — whether a professional interpreter, family member or friend — in place of or as a supplement to the free language services that you offer. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter.

*Note:* Using family members or friends is not always appropriate. For example, when you or local police respond to a domestic disturbance, using family members or neighbors to interpret for the alleged victim, perpetrator or witnesses may raise serious issues of competency, confidentiality and conflict of interest.
Meeting the Needs of Non-English Speakers

If prospective residents come to you who don't speak English well, they are called persons with "limited English proficiency" (LEP). HUD's regulation, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development—effectuation of Title VI of the Civil Rights Act of 1964," requires all recipients of federal financial assistance from HUD to provide "meaningful access" to LEP persons.

This means that if you receive any funds directly or indirectly from HUD, you are expected to be able to communicate effectively with people who speak little or no English. Sometimes this can be accomplished by having a bilingual staff member, especially if, for example, many of your applicants speak a single language, like Spanish.

If that is not cost effective, you can use the documents and forms that, after much urging by NAHMA and others, HUD translated and has available on its website. These documents include brochures & booklets, fact sheets, forms, I.D. cards, posters and public service announcements translated into numerous different languages.

To find them easily, go to HUD's main website (hud.gov) and put "LEP" in the Search box. You will be linked to the page with all of the above, plus links to Frequently Asked Questions and the Final Guidance.

In September 2011, NAHMA asked its members via an online survey whether they were using any of the vital documents translated by HUD. Sixty-seven percent of respondents said they were, and 33 percent said they were not. Some of those not using the translations may just not have many LEP applicants.

It that is not the case, and property managers just are not using the translated forms, then they could be subject to a complaint of discrimination being filed against them. This could result in an investigation by HUD, and if voluntary compliance is found to be necessary and not achieved, the Office of Fair Housing and Equal Opportunity could recommend termination of federal assistance.

Here are the vital documents most used by NAHMA members who responded to the survey:

- Resident Rights and Responsibilities Brochure: 100%
- EIV and You Brochure: 96%
- One of the four Model Leases: 86%

"How Your Rent Is Determined" Fact Sheets: 79%

The Document Package for Applicants/Tenants Consent to the Release of Information:

50%

Less commonly used are

the Annual Recertification Notices, Notice of Termination, Model Form of Notification of Rent Increase Resulting from Recertification Processing, Interim Adjustment Initial Notice, Supplement to Application for Federally Assisted Housing, and Certification of Domestic Violence, Dating Violence or Stalking. No respondent reported using the Interim Adjustment Termination of Assistance.

The most common languages used included:

- Spanish 100%
- Russian 64%
- Chinese 50%
- Korean 50%

Other languages included

- Amharic
- Arabic
- Armenian
- Creole
- Cambodian
- Farsi
- French
- Tagalog
- Vietnamese

Note that not all documents are available in all of these languages.

There are also a number of languages and documents NAHMA members wish were available, but at the top of their wish list is a 1-800 Oral Interpretation Hotline—which 100 percent of respondents feel is necessary.
OFFENDERS
CRIMINAL
SEXUAL
Heed New Rules for Lifetime Registered Sex Offenders

HUD unloads a list of tightened screening requirements and recommendations

Effective immediately, you have more hoops to jump through to screen your housing applicants. Specifically, the U.S. Department of Housing and Urban Development (HUD) requires that you take a more aggressive approach to make sure that you don't allow lifetime registered sex offenders into your housing.

On the heels of HUD Secretary Shaun Donovan's letter urging owners to allow more ex-offenders back into assisted housing (see AHA v8n6, pgs. 43-45), the Department is now tightening its rules to ensure that lifetime registered sex offenders don't make it into assisted housing communities. In a June 12 HUD Notice, the Offices of Multifamily Housing and Public and Indian Housing revised its mandates on screening for sex offenders who are subject to a lifetime registration requirement.

The tightened rules are in response to a 2009 Office of Inspector General (OIG) audit, which estimated that 2,094 to 3,046 assisted households included a lifetime registered sex offender, says Mary Ross, CPO, FHC, MORS, president of Ross Business Development in Marietta, GA. "Although this estimate is small in relation to the total number of households assisted through HUD programs, the potential public safety concern remains paramount," she explains.

Add These Layers to Your Screening Processes

Under this Notice, HUD states that you must:

Require all housing applicants to provide a complete list of all states in which any household member has resided.

Perform criminal background checks in the state where the housing is located and in states where the applicant and household members may have resided. If possible, you should screen all household members, including both adults and juveniles, advises Colleen Bloom, associate director for housing operations for Washington, D.C.-based Leading Age.

Ask whether the applicant, or any member of the applicant's household, is subject to a lifetime sex offender registration requirement in any state.

Adhere to the Limited English Proficiency (LEP) rules when processing applications of families for admission and at recertification.

Immediately pursue eviction or termination of assistance for a household member if you discover that the household member was erroneously admitted — meaning, that the household member was subject to a lifetime registration requirement at admission and was admitted after June 25, 2001.

Tip: Develop policies to verify that the family did indeed remove the household member who is a lifetime registered sex offender, Ross recommends. You might require that the resident household "prove that the sex offender has established a residence somewhere else using reasonable methods of verification such as a new lease, a new account for utilities, verification of change of address from the U.S. Postal Service, etc."

Are Sex Offenders Already Lurking? What to Do at

Re-Certification Time

Despite the screening requirements for new applicants, HUD goes lax on sex-offender screening upon interim or annual re-certification. At re-certification or re-examination time, HUD recommends — but does not require - that you ask whether the tenant or any household member is subject to a state lifetime sex offender registration program in any state.

The Department also recommends that you verify this information using the Dm Sjodin National Sex Offender Database (http://www.nsopw.gov/Core/Portal.aspx) and other official federal, state and local resources.

Strategy: If you use an annual re-certification questionnaire, consider adding questions pertaining to sex offender
registration. Ross recommends. For example, the questions might include:

Is any household member subject to a lifetime sex offender registration requirement in any state?

In what states has each household member resided? (Please list all states for every household member.)

Remember: "These rules apply to any household member who was subject to a lifetime sex offender registration requirement at admission and was admitted after June 25, 2001," Leading Age’s Bloom said in a recent statement. "For admissions before June 25, 2001, there is currently no HUD statutory or regulator)’ basis to evict or terminate the assistance of the household solely on the basis of a household member's sex offender registration status." ■
When (And When Not) To Allow Ex-Offenders Back Into Housing

HUD has some guidelines, but it's mostly up to your discretion

Allowing a criminal who has just finished serving a prison sentence back into assisted housing can make even the most hardened owner cringe. Your criminal policy may contain blanket prohibitions on ex-offenders, but the U.S. Department of Housing and Urban Development (HUD) is taking a softer stance on the issue — and suggests you follow suit.

Assisted-housing owners should "seek a balance between allowing ex-offenders to reunite with families that live in HUD subsidized housing and ensuring the safety of all residents of its programs," advised HUD Secretary Shaun Donovan and Acting Assistant Secretary for Housing - Federal Housing Commissioner Carol Galante in a recent letter. Donovan says that the letter came about due to the Obama Administration's belief in "second chances," allowing ex-offenders to start over and become productive citizens.

Your Screening Policy Is Up To You—But Make Changes Cautiously

HUD is encouraging owners to develop policies and procedures to allow ex-offenders back into affordable housing communities, within the limits of current statutory and regulatory requirements. "When screening family behavior and suitability for tenancy, owners may consider all relevant information, including factors that indicate a reasonable probability of favorable future conduct," the letter states. "Discretion is, however, afforded to each owner."

You may think that a past criminal record is a good predictor of future criminal behavior, and thus reject appli-
cants with any prior record. "Recent research shows, however, that individuals with an old criminal record do not exhibit a higher risk of committing a crime in the future than individuals without a criminal record," according to the National Housing Law Project (NHLP).

Not so fast: But without any regulations from HUD - and instead only vague recommendations - many industry experts are reluctant to advise making major changes to your existing, strict policies that preclude ex-offenders. "So many family sites have crime problems already that they should really think this through quite carefully before they change a thing," warns Candi Atkins of Candi Atkins Consulting in Las Vegas.

**Heed The Hard-And-Fast Prohibitions**

Despite all the fanfare over "second chances" for ex-offenders, you should still keep your policies aligned with the criminal-history red zones under federal statute. The NHLP outlines the following instances in which you **cannot** allow an ex-offender into assisted housing:

- **Sex Offenders** - A household member is subject to a lifetime registration requirement under a state sex offender registration program;
- **Meth Convictions** - A household member has been convicted of manufacturing or producing methamphetamine on the premises of federally-assisted housing; and
- **Drug-Related Evictions** - A household member has been evicted from federally-assisted housing for continued from page 43
drug-related criminal activity within the past three years. Unless the member has successfully completed a supervised drug rehabilitation program approved by the PHA or the circumstances leading to the eviction no longer exist (e.g., the member who engaged in the drug-related criminal activity is in prison, has died or is no longer a household member).

*Caveat:* You cannot deny admission based on unproven allegations, arrests not resulting to convictions, expunged/sealed/purged convictions, juvenile adjudications that don't qualify as convictions under state law, or criminal activity resulting from acts of domestic/dating violence or stalking against the household member, the NHLP states.

**Carefully Consider The 'Gray Areas'**

So what should you do to keep your ex-offender policy on par with HUD's views and objectives?

*Action point:* "As part of the review of the resident selection plan, you should probably check your criminal screening policies are 'reasonable,'" says Mary Ross, CPO, FHC, MORS, president of Ross Business Development in Marietta, GA.

Aside from the prohibitions on sex and certain drug offenses, there are plenty of "gray areas" when it comes to past convictions — and these are prime areas for ensuring that your policies are "reasonable." For instance, you might deny admission to a household if a member has participated in drug-related or violent criminal activity within the past three years, the NHLP says.

Under federal law, you can deny an applicant if the criminal activity occurred within a "reasonable time" before the admission decision, the NHLP states. "A PHA may adopt a different length of time for different types of criminal activity." such as separating misdemeanors and felonies by class, and then designating a set timeframe for each class. "Although some advocates believe that such a policy benefits individuals with a criminal record because it is easy for the PHA to administer, others find the model too rigid."

*When to grant leniency:* Secretary Donovan recommends that you consider evidence of rehabilitation and/or the applicant family's participation or willingness to participate in social services like counseling programs. Using your own discretion, however, you may admit the applicant on a case-by-case basis, such as if the household member:

- Successfully completed a supervised drug rehabilitation program:
• Completed another type of program supervised by drug courts; or
• No longer has the circumstances that led to the eviction.

Decision Points: Examine The Mitigating Circumstances

According to the NHLP, if you're considering a household with a member who has participated in drug-related or violent criminal activity, you should consider the mitigating circumstances, such as:
• The seriousness of the criminal activity;
• The relationship between the criminal activity and the safety and security of residents, PH A/site staff or property;
• The length of time since the offense:
• The age of the household member at the time of the offense;
• Evidence of rehabilitation, such as employment, participation in a job training program, education, participation in a drug or alcohol treatment program, or recommendations from a parole or probation officer, employer, teacher, social worker or community leader; and
• The effect of a denial of admission will have on the household and the community.

Bottom Line: As you review your own criminal policy to determine whether it's reasonable, always ensure that your tenant guidelines strike a balance between preserving the safety of all residents while providing opportunities for those ex-offenders who truly deserve that second chance.
Is Your Criminal History Policy Ex-Offender-Friendly?

Use this sample policy as a basis to review your own

If you're thinking about reviewing - or even revising - your criminal history policy to ensure that it reflects the latest sentiments from the Obama Administration and the U.S. Department of Housing and Urban Development (HUD), you don't have to reinvent the wheel. Take a look at this sample policy, courtesy of Candi Atkins of Candi Atkins Consulting in Las Vegas.

MODEL

CRIMINAL HISTORY POLICY

All applicants and household members will be screened for criminal history. A history of any of the following by any household member is cause for rejection of an application for housing.

* Any conviction or adjudication other than acquittal of:

  - First-degree murder;
  - Sex offenses, including but not limited to forcible rape, child molestation, and aggravated sexual battery;
  - Arson; and/or
  - Crimes involving explosives.

Within 10 years from the date of application any conviction or adjudication other than acquittal of:

  - A felony that involved bodily harm against a person or property, including but not exclusive of:
    - Homicide (other than first-degree murder);
    - Manslaughter;
    - Armed robbery;
    - Aggravated assault;
    - Buying, receiving, or possession of stolen property;
  - Burglary or theft;
  - Auto theft;
  - Embezzlement;
  - Sales or manufacture of a controlled substance; and/or
  - Any crime of violence that may establish that the applicant constitutes a direct threat to the health or safety of other individuals.

Within 5 years from the date of application any conviction or adjudication other than acquittal of:

  - A crime involving the illegal use of a controlled substance other than sales or manufacture;
  - Illegal gambling;
  - Prostitution;
  - Commercialized vice;
  - Stalking;
  - Forgery; and/or
  - Weapons offenses.

Within 3 years from the date of application any conviction or adjudication other than acquittal of:

  - Any other felony not included above.

Within 3 years prior from the date of application, the applicant or any household member has been imprisoned after being convicted of a felony.
Don't Interpret 'Drug-Related Criminal Activity* Too Broadly

Housing denial based on past drug charges won't always hold up

When it comes to your criminal policies for housing applicants, "drug-related criminal activity" isn't a catchall phrase. In fact, certain lesser drug-related charges may not support an application denial, even if the conviction occurred within the last three years. Here's how one public housing authority (PHA) learned this lesson the hard way.

Background: The Housing Authority of Indiana County (HAIC) in PA denied Section 8 housing to Brenda L. Romagna based on a possession of drug paraphernalia conviction that came up during the background check. The conviction occurred less than one month prior to Romagna's application for the Housing Choice Voucher Program. Romagna appealed the denial, but the hearing officer upheld the HAIC's decision.

When Romagna took her case to the trial court, the court overturned the denial. HAIC then appealed the trial court's decision to the Commonwealth Court of Pennsylvania. In the appeal, the HIAC specifically argued that the trial court ignored the underlying implications that possession of drug paraphernalia is inextricably linked with drug usage.

Take a Closer Look at the Definitions

The appellate court examined the same issue as the trial court - whether the HAIC was correct in categorizing Romagna's drug paraphernalia conviction as "drug-related criminal activity." A Section 8 Coordinator for HAIC testified that the PHA's policy is to automatically deny a housing application when the applicant has any drug-related or violent criminal activity within the three years prior to the application.

But the appellate court agreed with the trial court's decision that possession of drug paraphernalia did not constitute "drug-related criminal activity." Under 24 C.F.R. §982.553(a)(2)(ii)(A)(l), the U.S. Department of Housing and Urban Development (HUD) regulation defines "drug-related criminal activity" as:

The illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

The regulation does not include possession of drug paraphernalia as part of the definition for drug-related criminal activity. "Notably, the elements of the crime of possessing drug paraphernalia do not require actual possession of a drug," stated the appellate court Judge Mary Hannah Leavitt. "[A] conviction for 'drug-related criminal activity' requires the possession of a controlled substance; possession of drug paraphernalia does not."

Examine Language in Your Own Policy

The trial court also pointed to the HAIC's own definition of drug-related criminal activity, which did not mention drug
paraphernalia as part of the definition.

*Bottom line:* "The Housing Authority's definition of drug-related criminal activity does not specify that drug paraphernalia is 'drug-related,'" Judge Leavitt decided. "Nor does it use language broad enough to sweep possession of paraphernalia into the phrase 'drug-related criminal activity.' Instead, the definition lists specific activities and they are limited to the actual use or possession of a drug, not paraphernalia."
OPERATING COST
ADJUSTMENT
FACTORS

(OCAF)
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5559–N–01]

Notice of Certain Operating Cost Adjustment Factors for 2012

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice establishes operating cost adjustment factors (OCAFs) for project based assistance contracts for eligible multifamily housing projects having an anniversary date on or after February 11, 2012. OCAF s are annual factors used to adjust Section 8 rents renewed under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA).


FOR FURTHER INFORMATION CONTACT: Stan Houle, Housing Program Manager, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone number 202-402-2572 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. OCAF s

Section 514(e)(2) of MAHRA requires HUD to establish guidelines for rent adjustments based on an OCAF. The statute requiring HUD to establish OCAF s for LIHPRA projects and projects with contract renewals or adjustments under section 524(b)(1)(A) of MAHRA is similar in wording and intent. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAF s as the method by which renewal rents are established or adjusted.

LIHPRA projects are low-income housing projects insured by the Federal Housing Administration (FHA). LIHPRA projects are primarily low-income housing projects insured under section 221(d)(3) below-market interest rate (BMIR) and section 236 of the National Housing Act, respectively. Both categories of projects have low-income use restrictions that have been extended beyond the 20-year period specified in the original documents, and both categories of projects also receive assistance under section 8 of the U.S. Housing Act of 1937 to support the continued low-income use.

MAHRA gives HUD broad discretion in setting OCAF s—referring, for example, in sections 524(a)(4)(C)(i), 524(b)(1)(A), 524(b)(3)(A) and 524(c)(1) simply to “an operating cost adjustment factor established by the Secretary.” The sole limitation to this grant of authority is a specific requirement in each of the foregoing provisions that application of an OCAF “shall not result in a negative adjustment.” Contract rents are adjusted by applying the OCAF to that portion of the rent attributable to operating expenses exclusive of debt service.

The OCAF s provided in this notice and applicable to eligible projects having a project based assistance contracts anniversary date of on or after February 11, 2012, are calculated using the same method as those published in HUD’s 2011 OCAF notice published on November 8, 2010 (75 FR 68616). Specifically, OCAF s are calculated as the sum of weighted average cost changes for wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water/sewer/trash using publicly available indices. The weights used in the OCAF calculations for each of the nine cost component groupings are set using current percentages attributable to each of the nine expense categories. These weights are calculated in the same manner as in HUD’s November 8, 2010, notice. Average expense proportions were calculated using three years of audited Annual Financial Statements from projects covered by OCAF s. The expenditure percentages for these nine categories have been found to be very stable over time, but using three years of data increases their stability. The nine cost component weights were calculated at the state level, which is the lowest level of geographical aggregation with enough projects to permit statistical analysis. These data were not available for the Western Pacific Islands, so data for Hawaii were used as the best available indicator of OCAF s for these areas.

The best current price data sources for the nine cost categories were used in calculating annual change factors. State-level data for fuel oil, electricity, and natural gas from Department of Energy surveys are relatively current and continue to be used. Data on changes in employee benefits, insurance, property taxes, and water/sewer/trash costs are only available at the national level. The data sources for the nine cost indicators selected used were as follows:

- **Labor Costs:** First quarter, 2011 Bureau of Labor Statistics (BLS) ECI, Private Industry Wages and Salaries, All Workers (Series ID CIU020200000000001) at the national level and Private Industry Benefits, All Workers (Series ID CIU020300000000001) at the national level.
- **Property Taxes:** 2009–2010 Census Quarterly Summary of State and Local Government Tax Revenue—Table 1 http://www2.census.gov/govs/qtax/ 2011/q1tt1.pdf. Annual property taxes are computed as the total of four quarters of tax receipts. Total annual taxes are then divided by number of households to arrive at average annual tax per household. For 2009, the number of households is taken from the estimates program at the Bureau of the Census. http://www.census.gov/popest/ housing/HU-EST2009.html. At the time
of computation data on the number of households was not yet available for 2010 so the 2009 number was used in its place.

- **Goods, Supplies, Equipment:** April 2010 to April 2011 Bureau of Labor Statistics (BLS) Consumer Price Index, All Items Less Food, Energy and shelter (Series ID CUUR0000SA0L12E) at the national level.
- **Insurance:** April 2010 to April 2011 Bureau of Labor Statistics (BLS) Consumer Price Index, Tenants and Household Insurance Index (Series ID CUUR0000S6ED) at the national level.
- **Natural Gas:** Energy Information Agency, Natural Gas, Residential Energy Price, Annual prices per thousand cubic feet at the state level. Due to EIA data quality standards several states were missing data for one or two months in 2010; in these cases, data for these missing months were estimated using data from the surrounding months in 2010 and the relationship between that same month and the surrounding months in 2009. http://www.eia.doe.gov/dnav/ng/ng_pri_sum_a_EPG0_PTRS_DMc_a.htm
- **Water and Sewer:** April 2010 to April 2011 Consumer Price Index, All Urban Consumers, Water and Sewer and Trash Collection Services (Series ID CUUR0000SE071) at the national level.

The sum of the nine cost component percentage weights equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAF’s, state-level cost component weights developed from AFS data are multiplied by the selected inflation factors. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and increased by 4 percent from 2009 to 2010, the wage increase component of the Virginia OCAF for 2012 would be 2.0 percent (50% * 4%). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the 2012 OCAF for Virginia. The OCAF’s for 2012 are included as an Appendix to this Notice.

### II. MAHRA and LIHPRHA OCAF Procedures

MAHRA, as amended, created the Mark-to-Market Program to reduce the cost of federal housing assistance, enhance HUD’s administration of such assistance, and ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without restructuring plans under the Mark-to-Market Program, including projects that are not eligible for a restructuring plan and those for which the owner does not request such a plan. Renewals must be at rents not exceeding comparable market rents except for certain projects. As an example, for Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.), that are eligible for renewal under section 524(b)(1) of MAHRA, the renewal rents are required to be set at the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities); or (3) comparable market rents for the market area.

LIHPRHA (see, in particular, section 222(a)(2)(G)(i), 12 U.S.C. 4112 (a)(2)(G) and HUD’s regulations at 24 CFR. 248.145(a)(9)) requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor, to be determined by HUD to the portion of project rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of project rent attributable to project oversight costs.

### III. Findings and Certifications

**Environmental Impact**

This issuance sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance Number for this program is 14.187.

Dated: October 20, 2011.

Caroll J. Galante,

*Acting Assistant Secretary for Housing—Federal Housing Commissioner.*

**Appendix**

**Operating Cost Adjustment Factors for 2012**

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[FR Doc. 2011–27816 Filed 10–24–11; 4:15 pm]
RENT COMPARABILITY STUDY

(RCS)
MEMORANDUM FOR:
All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Operations Officers
All Multifamily Headquarters Office Directors
All Multifamily Housing Project Managers
All Contract Administrators

FROM:
Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, HTH

SUBJECT:
Suspension of the Requirements Contained in Sections 9-23, 9-24, and 9-25 of the Section 8 Renewal Policy Guide

On May 18, 2012, the Department issued page changes to the Section 8 Renewal Policy Guide. Sections 9-23, 9-24, and 9-25 of the page changes provided new procedures for appraisers should the market rents in the owner’s rent comparability study (RCS) exceed 110 percent of the Small Area Fair Market Rent in metropolitan areas or the Fair Market Rent in non-metropolitan areas.

A number of operational issues have arisen from the implementation of these page changes and the Department is considering further revisions to the guidance.

Effectively immediately, the requirements in these sections are suspended. Appraisers do not have to follow these guidelines nor can Field staff or PBCAs enforce these provisions.

Please forward this information to appropriate parties.
REAC INSPECTIONS
REAC Inspections

Wednesday, July 11, 2012

**Are You Ready for Your REAC Inspection? Check Out REAC on YouTube**

[http://www.youtube.com/watch?v=DJf5M9JtbaE](http://www.youtube.com/watch?v=DJf5M9JtbaE)

Footage on brief overview of REAC's scoring methodology and a few factors that significantly affect scores.


Links for other videos.

The video links above have been posted by the U.S. Department of Housing and Urban Development as a resource for the preparation for and the understanding of REAC inspections.
A copy of the REAC Compilation Bulletin Revision 2.3 may be found here:

The scoring changes are as follows:

* **Roaches**

When either one dead roach or only roach droppings is observed in an unit or in an inspectable item location in Common Areas, the inspector is to record this observation as Health and Safety (H&S), Hazards, Other, and in the comment field write either "One dead roach" or "Roach droppings only." When a deficiency is recorded under "Hazards, Other," there is no point loss associated with the deficiency. The new "dead" roach protocol is effective for inspections as of today, September 4, 2012.

However, when more than one dead roach OR one or more live roaches are observed in a unit or in an inspectable item location in Common Areas, the inspector must continue to record this observation as "Infestation."

* **Tenant-Owned Equipment**

Refrigerators, stoves, and window air conditioners owned by the resident must be inspected and deficiencies recorded, including H&S deficiencies, as if the appliances are owned by the property. Property owners and management agents (O/As) may continue to submit TR/DBA requests for cited deficiencies for these resident owned items.

All other resident owned property will be inspected for H&S deficiencies only. These H&S deficiencies must be recorded as H&S, Hazards, Other. Examples of "resident owned property" are fire extinguishers, mirrors, picture frames, fan covers, play equipment, etc. When a deficiency is recorded under "Hazards, Other," there is no point loss associated with the deficiency.

However, when resident owned property, including furniture, appliances or other devices that prohibit access to call-for-aids (pull cords) or create a blocked egress, it must continue to be cited as Call-For-Aid, Inoperable or H&S, Emergency/Fire Exits, Blocked/Unusable as applicable.

Improperly stored flammable materials will also continue to be recorded as H&S, Flammable Materials, Improperly Stored, regardless of ownership. This revision is already in effect for inspections.

* **Fire Extinguishers**

All fire extinguishers observed must be inspected, regardless of who owns them. Fire extinguishers owned and supplied by the property that are missing, expired, discharged, or otherwise damaged will be cited as a deficiency regardless of whether or not the extinguisher is required by local code. Fire extinguishers owned and supplied by the residents will be cited only for H&S deficiencies and any such deficiencies recorded as H&S, Hazards, Other. When a deficiency is recorded under "Hazards, Other," there is no point loss associated with the deficiency. This revision is already in effect for inspections.

* **Scattered Site Projects**

Inspectors are required to visit all of the locations in the scattered site property to visually verify all building and unit counts prior to sample generating. After generating the sample and selecting the sample buildings and units, inspectors are only required to re-visit and inspect the sample buildings and units and the sites associated with the sample buildings. If a building that is selected as part of the sample is on a multiple building location, the entire site for that location must be inspected.
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LIST OF REVISIONS (MODIFIED AUGUST 22, 2012)

The revisions listed in this section provide guidance that replace or expand current clarifications in the Compilation Bulletin or UPCS protocol. Each revision must be followed starting on the listed “effective” date; prior to that effective date inspectors must continue to follow the current guidance listed in this document or posted on the REAC Physical Inspection website. These revisions supersede the clarifications in the Compilation Bulletin and all other separate guidance posted prior to the listed effective date and will be incorporated into the body of the document in the next full revision of the Compilation Bulletin. Future updates to this section will be posted at http://www.hud.gov/offices/reac/products/pasp/pasp_bulletin.cfm and will be identified by a change to the Revision number (i.e., CB 2.1, CB 2.2, CB 2.3, etc.) and by a change to the “last Modified” date in the section hearing above. This will be the only text in the Compilation Bulletin that will change until the release of Revision 3; therefore inspectors can print the complete document or print off only this section and replace it in their hard copy of Revision 2.1. All other sections, including the Table of Contents, Index, and page numbers will not be affected.

Revision 1: (Effective September 4, 2012) When either one dead roach or only roach droppings is observed in a Unit or in an inspectable item location in Common Areas (e.g., halls/corridor/stairs, laundry room, lobby office etc.), the inspector is to record this observation as Health and Safety, Hazards, Other, and in the comment field write either “One dead roach” or “Roach droppings only.”

When more than one dead roach is observed in a Unit or in an inspectable item location in Common Areas (e.g., halls/corridor/stairs, laundry room, lobby office, etc.), the inspector is to record this observation as “Infestation.”

When the inspector observes one or more live roaches in a Unit or in an inspectable item location in Common Areas (e.g., halls/corridor/stairs, laundry room, lobby office, etc.), the inspector is to record this observation as “Infestation.”

Revision #1, effective September 4, 2012, is a new provision and will be added to Part II: Definition Clarifications, Page 33, Health and Safety, as a new Item “E. Infestation.” The Index will be updated accordingly.

Revision 2: (Effective August 6, 2012) Refrigerators, stoves, and window air conditioners owned by the resident must be inspected and deficiencies recorded, including H&S deficiencies, as if the appliances are owned by the property. POAs may continue to submit TR/DBA requests for cited deficiencies for these resident owned items.

All other resident owned property will be inspected for H&S deficiencies only. These H&S deficiencies must be recorded as Health and Safety, Hazards, Other. Examples of resident owned property are fire extinguishers, mirrors, picture frames, fan covers, play equipment, etc.

Resident owned property, including furniture, appliances or other devices that prohibits access to call-for-aids (pul cords) or creates a blocked egress must be cited as Call-For-Aid, Inoperable or Health and Safety, Emergency/Fire Exits, Blocked/Unusable as applicable. Refer to Part II., Units., C. Call-for-Aid, and Part II., Health and Safety, A. Emergency/Fire Exits.

Improperly stored flammable materials will be recorded as Health and Safety, Flammable Materials, Improperly Stored, regardless of ownership.

Revision #2 replaces: Part II: Definition Clarifications, Units, Page 29, Unit General Information, 1. Refrigerators, stoves, fire extinguishers, and window air conditioners owned by the resident must be inspected and deficiencies recorded as if the appliances are owned by the property.
Revision 3: *(Effective August 6, 2012)* All fire extinguishers observed must be inspected, whether resident owned or property owned. Fire extinguishers owned and supplied by the property that are missing, expired, discharged, or otherwise damaged will be cited as a deficiency regardless of whether or not the extinguisher is required by local code. Fire extinguishers owned and supplied by the residents will be cited only for H&S deficiencies and any such deficiencies recorded as Health and Safety, Hazards, Other. Refer to Part II, Units.

Revision #3 replaces: Part II: Definition Clarifications, Building Systems, Page 24, F. Fire Protection, Section 2. a. All fire extinguishers observed must be inspected, whether resident owned or property owned.

Revision 4: *(Effective March 10, 2012)* Scattered Site: Inspectors are required to visit all of the locations in the scattered site property to visually verify all building and unit counts prior to sample generating. After generating the sample and selecting the sample buildings and units, inspectors are only required to re-visit and inspect the sample buildings and units and the sites associated with the sample buildings. If a building that is selected as part of the sample is on a multiple building location, the entire site for that location must be inspected.

Example #1: *(One building per location)* An inspector visually verifies a scattered site property and finds that the profile consists of 40 buildings and 80 units scattered over 40 different locations throughout the city. The inspector updates the property profile and generates the sample. The software selects a sample of 16 buildings and 20 units. The inspector is required to re-visit and inspect the sites associated only with the 16 buildings selected as the sample, and does not have to re-visit the other 24 scattered site locations.

Example #2: *(Multiple buildings at one location)* An inspector visually verifies a scattered site property and observes that the profile consists of 20 buildings and 40 units scattered over 16 locations. Fifteen locations have a single building and one location has five buildings. The property information is updated and the sample is generated with 16 buildings and 16 units in the sample. Eleven buildings in the sample are at a location with a single building and one building is at a location that has five buildings. When the inspector arrives at each of the 11 buildings that are at a single building location the inspector must inspect the site around the building. When the inspector inspects the building at the location with five buildings, that entire site must be inspected, including the site around all of the buildings that are not in the sample. The inspector is not required to re-visit the four remaining scattered site locations.

Revision #4 replaces: Part I: Buildings, Units & General Information, Pages 9-10, C: Scattered Sites, Section 2., a. and b. C. 2. For purposes of defining scattered sites only: a. Single Family Building; (i) For purposes of determining a single family scattered site only, a single family scattered site building is a building comprised of one to four HUD assisted or insured dwelling units. For example, a row/townhouse building, which contains one to four HUD assisted or insured units, is a single family building. Do not confuse “single family building” with the UPCS software building type definition for “Single Family.” (ii) If all buildings are single family buildings (four or less units per building), the inspector is not required to visually verify the buildings prior to sample generation. b. Multifamily Building: (i) For purposes of determining a multifamily scattered site, a multifamily building is comprised of five or more HUD assisted or insured dwelling units. For example, a row/townhouse building, which contains five or more HUD assisted or insured units, is a multifamily building. Do not confuse “multifamily building” with HUD’s Department of Multifamily Housing. (ii) If any one building has five or more units per building, the inspector is required to visually verify all the buildings associated with the inspection prior to sample generation (e.g., If only one of 20 buildings contains five or more units, then all 20 buildings must be visually verified prior to sample generation).
Begin Your REAC Appeal Even Before The Inspector Arrives

*The key to appeals: Documentation of the inspection by a knowledgeable escort.*

Real Estate Assessment Center (REAC) scoring is notoriously variable. Many companies receive scores that vary by as much as 50 points between properties that seem identical — or even on the same property from one year to another. Eli's experts advise that you begin the appeals process before your inspection, not after you receive the score.

**First:** Ensure that your computer and online systems are ready to access HUD's web site as soon as the inspection is scheduled.

**Smart idea:** "As soon as you get the call scheduling an inspection, you need to make sure you have the correct web address and password to access your inspection report so you're not scrambling to find out what your score was and what areas were deficient," says Dennis DiBello of American Property Consultants, Inc, a REAC consultancy based in St. Leonard, MD. The appeals window is short: 30 days from the time HUD puts the document onto the web. HUD no longer notifies owners by mail.

**Use REAC-Knowledgeable Escorts**

The key to a successful REAC appeal is documentation by an escort representing the property owner who is knowledgeable about REAC inspection protocol. "The primary escort should always be someone who understands the defect definitions," counsels consultant and former HUD inspector Michael Gantt with Baltimore-based REAC Solutions. "Don't just send the most expendable person that day, like the new maintenance guy."

In anticipation of an appeal, Ganttt that the inspection party actually include three escorts: a maintenance person who knows the physical property, a management person who knows the residents and a "REAC expert" who attends all your inspections at every property and is the primary communicator with the inspector.

The expert could be someone like a regional manager with training in the inspection language, or even an outside consultant who specializes in this type of work and assists in the appeals process. If your escort knows the definitions and thinks the inspector has exceeded them, this insight can help on appeal. "Your escorts can only fully understand the inspection if they participate in such inspections frequently," Gantt adds.

**Tip:** Make sure one of the escorts has a camera (still or video), notebook and pen at hand to record any deficiencies. The escort responsible for documenting the inspection should also have a copy of REAC definitions on hand. Any discrepancies between what the inspector calls out or writes down and the actual situation may be a basis for appeal.

**Pin Down Your Inspector**

To increase the odds of a successful appeal in a problem area, it's critical that your escorts insist the inspector specify exactly what defect an inspector is citing and in which area, Gantt says. When the inspector cites a Level 3 or health and safety problem, for example, ask that he note his observations in full and proper REAC language.

**Example:** The inspector is required by REAC protocol to "call out deficiencies" as they are recorded. The escort should politely insist that the inspector use REAC's language to describe defects. Don't allow the inspector to say simply that the door does not close. He should say something like, "bathroom door, damaged hardware, level 3."

The more the inspector writes, the better chance there is that he will not properly describe the actual situation, which — in combination with your escort's documentation — may assist in an appeal. "Basically, the more he writes, the better chance there is at getting tripped up on his own words," Gantt observes.

**Smart idea:** Don't volunteer a lot of information to the inspector. Ask a lot of questions, instead.

**Understand Where You Lost Points**

"Now that I've got my report, what do I do?"
Frankly, many people find the scoring report confusing.

*Do the math:* The first step is to understand the difference between nominal versus weighted scoring. If some areas are not applicable to the inspection, points from those areas will be redistributed to other areas. DiBello suggests that the first basis for appeal could be that your property hasn't changed from the last inspection, but the points are weighted differently.

*Key:* Make sure you understand whether the re-calculated numbers are helping you or hurting you. Sometimes you are better off not appealing after you examine the re-weighting.

Next, pinpoint where you lost the most points. Look at each area and decide what your chances are to succeed on appeal, given the documentation you have from your inspection escort.

*Don't waste your time:* DiBello offers these time-saving tips to remember when you decide whether to submit an appeal:

- Realize that HUD will not even consider changing a classification of defect (for example, from Level 2 to I, or 3 to 2) in an appeal.
- Generally speaking, because HUD is overwhelmed with appeal requests, they also won't consider an appeal if the change in score doesn't change your status category level. That is, a successful appeal must move you from one category — "poor" (under 60 points), "standard" (60-89 points), or "high performer" (90+ points) — to another.

### Appealing The Appeal

The appeals process is not necessarily final the first time you receive a negative response, Gantt emphasizes. If an appeal is turned in on time and denied for a reason like "inadequate documentation," you should call the reviewer and discuss the reason or submit additional materials. "It's possible to overturn an appeal that was denied for trivial reasons if you remain assertive."

*Example:* One property manager was confidentially advised by someone in the appeals office that his very carefully and thoroughly documented appeal had been turned down by another reviewer because an accompanying letter from an expert on local building codes failed to include a title under his signature, Gantt says.

Apparently the overworked reviewer had quickly scanned the review in search of an "excuse" to quickly deny it without having to read it fully. The appeal was initially denied even though the expert's name and title appeared in the letterhead.

---

**MANAGEMENT**

### Don't Let Health And Safety Hazards Torpedo Your REAC Score

**And set the clock ticking for HUD sanctions.**

A cracked cover plate on an electrical outlet may seem like no big deal, but your Real Estate Assessment Center (REAC) inspector — and HUD — are likely to disagree. This is one violation that HUD considers an "Existent Health and Safety" (EHS) hazard, and it could cost your property far more than a failing REAC score.

*Reason:* HUD considers EHS violations to pose a risk of physical harm or even death. As a result, the department will cut you very little slack in remedying any EHS hazards quickly. In fact, if you don't repair these problems within 72 hours, you could be looking at sanctions including eventual suspension or debarment from HUD programs.

What's the best way to protect yourself from HUD's enforcement hammers nailing you on REAC inspection findings? You can start by learning from an expert.

*Assisted Housing Alert* asked **Scott Precourt**, director of operations and co-owner of **U.S. Housing Consultants** in New London, CT, for his advice on avoiding EHS headaches.

**Ignorance Of 13 Hazards Will Prove Unlucky**

"The first thing that property owners or managers should learn is exactly what an EHS hazard is," advises Precourt. On this front, HUD gives you all the information you need. The department has identified 13 types of conditions that it defines as exigent:
1. Missing covers for electrical panels or exposed wiring of any kind;
2. Missing circuit breakers on electrical panels or electrical boxes;
3. Missing electrical outlets and switches:
4. Missing or broken cover plates for electrical outlets or switches;
5. Water leaks on or near electrical equipment;
6. Missing or inoperable smoke detectors;
7. Missing, damaged or expired fire extinguishers;
8. Blocked or unusable fire or emergency exits;
9. Missing components of fire escapes;
10. Security bars preventing exit via windows;
11. Misaligned flue or ventilation systems on water heaters;
12. Misaligned flue or ventilation systems on HVAC systems or chimney; and
13. Detection of propane, carbon monoxide, methane or natural gas.

Of these conditions, Precourt identifies exposed wiring and missing electrical covers as the violations property managers most frequently overlook.

Once you — and your maintenance team — have thoroughly acquainted yourself with the EHS hazards list, it's time to put your knowledge into action. "Maintenance teams should get into these areas as often as possible. Remember that just because all electrical connections and panels were secure two weeks ago doesn't mean they are secure now," cautions Precourt.

*Good idea:* Consider distributing a laminated list of EHS hazards to all maintenance staff for use during internal inspections that you schedule on a regular basis. The frequency of these investigations will vary depending on the size of your property and maintenance resources. However, the more practice your staff has in searching for EHS violations, the more smoothly you can expect your pre-REAC inspection preparations to proceed.

You also don't want to minimize the value of a solid second opinion. An independent inspection consultant can look at your property with fresh eyes and perhaps uncover an issue that your staff routinely overlooks. A consultant can also redirect maintenance efforts that may be prioritizing the wrong elements. "A lot of properties still focus far too much energy on how well painted everything is, when they should be making sure that everything already on property works as designed," says Precourt.

*Remember:* HUD puts a cap on the violations you can receive in individual units or common areas in your REAC score. However, there are no limits on health and safety areas, so violations can just keep piling up.

"Whatever cost a property spends before the inspection is generally far less than the headache and stress of dealing with a failed inspection," notes Precourt.

**Plan Ahead For Unexpected Inspection Outcomes**

Of course the best course against EHS trouble is to avoid any violations in the first place. But if you do find yourself on the receiving end of exigent health and safety citations, you'll need to act fast to stay in HUD compliance. Properties have only 72 hours to correct any EHS violations that a REAC inspection uncovers and then send certification of repairs to the local multifamily housing office.

In addition to the signed certification form, HUD also wants the details of each repair. The easiest way to keep track of this information is through a work order. says Precourt. Be sure that your maintenance staff or contractor documents the type of hazard, location, method of repair, date and time. Then, double-check the work order's accuracy before sending it to your local HUD office along with the required certification form.

*Safe side:* After you confirm your REAC inspection date, your next call should be to your maintenance staff or outside contractors as needed. Since HUD puts you on such a tight timeframe for EHS fixes, reserve post-inspection time on contractors' calendars in advance. That way, you won't need to rifle through the Yellow Pages and beg electricians to squeeze you into their schedules.

**Avoid Arduous Enforcement Actions**

If your local multifamily housing office doesn't see your repair certification within three business days,
Waste No Time Faxing In Exigent Hazard Repairs

Expect HUD to bring down the hammer after 72 hours.

If you didn't manage to wipe out all of your Exigent Health and Safety hazards before your REAC inspection, you need to put repairs at the top of your to-do list. HUD will look for the form below to certify your corrections within three business days of inspection.

Do this: Mail or fax this completed model certification form to your local HUD office in order to prevent your compliance from falling into disrepair:

"PROJECT OWNER'S CERTIFICATION THAT ALL EXIGENT HEALTH AND SAFETY ITEMS HAVE BEEN CORRECTED
SEND OR FAX SIGNED COPY TO LOCAL MULTIFAMILY OFFICE"

[Name of Project Owner:] ____________________________

(the "Project Owner"), the owner of [Project Name:] ____________________________

[City] ____________________________ , [State:] ____________________________ [Project Number:] ____________________________

(the "Project"), by and through its daily authorized representative identified below, hereby certifies that:

1. All Exigent Health and Safety ("EH&S") items at the Project have been corrected. Such EH&S items include those identified in the Notification of Exigent and Fire Safety Hazards Observed, dated ____________________________.

2. The attached Report accurately identifies the repairs that have been made to correct the EH&S items, the location of those repairs and the date or dates the repairs were made. If repairs were not made, the dangerous condition was eliminated.

This certification is made by the Project Owner and is signed by a duly authorized representative of the Project Owner, who is so authorized by reason of his/her position as the [State Fully Relationship Between Signer of Certification and Project Owner:] ____________________________

All of the foregoing statements, as well as the date, signature and identifying information of the signer and the Project Owner that follows, are HEREBY CERTIFIED as true and accurate this ______ day of ___________ 20 ___.

Project Owner: ____________________________

By: ____________________________

Signature: ____________________________

Print Name: ____________________________

Title: ____________________________

Careful: HUD looks for specific language in your certification, so be sure to copy this form verbatim. In addition, comply with these other requirements:

* Print the certification on the property owner's letterhead.

* Secure the signature of the property owner or a "duly authorized representative." A representative must describe his relationship to the owner where requested.
Smarten Up Your REAC Strategy: Focus On Safety

Real Estate Assessment Center (REAC) physical inspections are basically a "numbers game," so play smart. Prepare for the inspectors by attending to the top-scoring, top-attention-getting defects. Hint: Open your eyes to health and safety violations.

Get the Most Bang for Your Buck

*Mistake:* When a REAC inspection looms, panicking and telling your staff to just go fix everything that's broken or damaged "is a recipe for failure." warns Michael Gantt, president of REACSolutions, in a seminar sponsored by the Maryland Affordable Housing Coalition. Instead, you must prioritize your repairs so that you're taking a very strategic approach.

You should focus on the defects that carry high REAC scoring values but low costs of remediation, Gantt advises.

But regardless of cost, you should place the highest priority on defects involving health and safety. You must "place a high priority on anything that may endanger residents, visitors and employees," he stresses.

REAC's scoring system heavily weights any "exigent health and safety" (EH&S) deficiencies, earning the highest-possible criticality and severity scores, which leads to the largest point deductions, said analyst Kevin Laidlaw in an article for Columbus, OH-based Lancaster Pollard, a financial consulting firm for health care, senior living and affordable housing organizations. Inspectors score EH&S items separately from non-EH&S issues.

**Focus on Health & Safety Deficiencies**

And in each of the five inspectable areas - Site, Exteriors, Systems, Common Areas and Units - REAC inspectors will look for these EH&S defects:

- Propane, natural or methane gas leaks;
- Exposed wires or open electrical panels;
- Water leaks on or near electrical equipment;
- Blocked or unusable emergency or fire exits;
- Blocked fire escapes or ladders;
- Missing or misaligned chimney for gas-fired water heater or HVAC unit;
- Window security bars preventing exit;
- Expired fire extinguishers; and
- Inoperative or missing smoke detectors.

Also, the inspector must categorize each EH&S item as "life-threatening" (LT) or "non-life-threatening" (NLT). Moreover, any designated EH&S inspection item will receive Level 3 scoring - there are no Level 1 and Level 2 scores for these deficiencies.

**Are You Guilty of the Top 20?**

Another good list to review is the U.S. Department for Housing and Urban Development's (HUD) "Top 20 Deficiencies'' (http://www.hud.gov/offices/reac/products/pass/top20.pdf). These are among the most common score-depleting items that REAC inspectors find:

1. The water heater's pressure-relief valve discharge tube does not extend to within 18 inches from the floor.
2. The chimney vent stack on a gas-operated water heater or furnace is misaligned.
3. The covers are missing from HVAC baseboard heaters.
4. Access to the electrical panel is blocked by furniture or other items that are not easy to remove.
5. The electrical panels have **missing interior covers** (aside from the panel lid box itself).
6. **Open breaker/fuse ports** are not covered.
7. The factory-installed **seals on exterior doors**, such as building or unit doors, are damaged.
8. Exterior **door hardware** does not lock or latch properly and fire doors do not function as designed.
9. **Security doors** have dual-side key locks.
10. **Kitchen stove burners** are not working.
11. **Plumbing** pipes and faucets are leaking, and/or areas around any leaks are not cleaned up and repaired.
12. **Sinks/showers** are damaged - hardware problems, diverters are not working, drains don't have stoppers, or hot and cold water handles are missing or not working.
13. **Clothes dryers** are not properly vented to the outside from units or laundry rooms.
14. **Storm water sewers** are clogged with trash or leaves.
15. **Sanitary sewer damaged covers** - caps located in the grass on the exterior of the building have "\(^\) been damaged by a lawn mower.
16. **Trash chutes** have missing hardware and the chute door does not close properly.
17. **Trash receptacles** are overflowing and/or are not adequate in size for the property.
18. The back-up **auxiliary lighting** does not work.
19. There are **leaks in the domestic water** supply, including hose bibs located on the exterior of the building.
20. **Outlet and switch plate covers** are cracked or broken.

**Bottom line:** You will make the most of your time and money by re-tooling your REAC inspection strategy to match inspectors' greatest concerns.

Remember, one of the best ways to get ready for a REAC inspection is to perform your own pre-inspection. "A self-inspection can catch most issues prior to the inspector's arrival," says Laidlaw.
Take The Headache Out Of Repairs With A Quick-Fix Kit

Keep these materials on-hand for easy fixes

Getting ready for a Real Estate Assessment Center (REAC) inspection comes with a long to-do list, but many of your repairs are likely to be simple fixes. And if you keep certain materials handy, you can make your job even easier. Here's a "Quick-Fix Inspection Materials List," courtesy of The Inspection Group, Inc. Use it to be sure you have what you need to keep small defects from racking up big REAC scores.

- Switch plate covers
- Outlet covers, duplex type
- GFI outlets and covers
- Circuit breaker panel plastic inserts for open slots
- Rubber stoppers for bathroom sinks
- Rubber stoppers or pancakes for bathtubs
- Burner caps for gas ranges (often dirty, the pinhole openings are clogged with grease)
- 4" x 4" junction box covers and screws
- Replacement door passage sets
- Replacement locking passage sets for bathroom doors
- Spray-on graffiti remover and rags (Easy-Off Oven Cleaner or other)

- 6" x 6" plastic laminate (wood grain to match interior doors - i.e., walnut or light oak) and 3M spray adhesive. If there is a hole in a door, spray and bond over hole.
- 6" diameter plastic wall plates for door stops (useful in covering holes)
- Replacement bulbs or LED panel sets for Exit lights
- Replacement bulbs for call-for-aid lights (if applicable)
- Lighter (long barbecue-type) to re-light pilot lights
- Can of white (flat or satin) spray paint (useful for touching-up ceiling tiles)
- 4' pieces of cove-base molding (for patching or cut-and-glue) and tube of adhesive
- Tube of light gray caulk with gun
- 5 gallon empty paint bucket (for holding these materials and handy for a quick stepstool)
- Battery-operated smoke detectors and batteries
- Basic tools: screw driver set, scissors, razor knife, shop rags, etc.
REASONABLE ACCOMMODATIONS
Accommodate Accessibility Requests Before The Feds

Come Knocking

Costs can really soar when you have to compensate individuals, too.

If you think you can skip over making your property accessible to people with disabilities just because the process is expensive, you should go ahead and prepare to be on the losing end of a Fair Housing Act complaint.

The Department of Justice has ruled that the owners, developers, architect, and civil engineers of Park Place Apartments in Louisville, KY must compensate 29 individuals with disabilities to the tune of $275,000 because those individuals were unable to access any of the property's 276 units.

In addition to the individual compensation, the DOJ tasked Park Place with retrofitting the property to make it accessible by modifying walkways, removing steps, providing accessible curb ramps and providing accessible walks to site amenities, such as the clubhouse, pool, mailbox and trash facilities. Park Place must also reconfigure thermostats and outlets to accessible heights, increase door widths, and reconfigure bathrooms and kitchens.

"The Fair Housing Act requires equal access to housing for persons with disabilities," Thomas Perez, assistant attorney general for the DOJ's Civil Rights Division, said in a statement. "This comprehensive resolution will ensure equal access at this apartment complex and compensate those injured by the defendants' failure to provide accessible housing."

Though Park Place agreed to the settlement, it must still be approved by a federal district judge — meaning the price tag hanging over Park Place's head could climb even higher.

Lesson learned: Though Park Place's owners, developers, and engineers saved money by not originally accommodating individuals with disabilities, they wound up paying hundreds of thousands of dollars on top of the construction price tag — and they came under the scrutiny of the DOJ.

Make sure you work to accommodate individuals when they first complain about accessibility at your property, or you could face a similar verdict.
Clearing up Misconceptions About Reasonable Accommodation Requests

This month marks the 44th anniversary of the signing of the Fair Housing Act (FHA), which protects individuals against discrimination in housing based on race, color, religion, sex, national origin, familial status, or disability. In honor of Fair Housing Month, we'll focus on reasonable accommodation requests by individuals with disabilities. This can be a confusing topic, so we're going to go over the rules and dispel common misconceptions about how to handle these requests properly.

Disputes about reasonable accommodations often lead to formal fair housing complaints. Overall, disability discrimination accounts for the most common source of complaints to federal, state, and local fair housing agencies. According to the most recent HUD statistics, 44 percent of the 10,000-plus complaints filed nationally in 2009 were based on disability, and roughly half of those—22 percent—involves reasonable accommodation requests.

We'll separate fact from fiction by clearing up the 10 most common myths about the law and explaining just what is required to identify and handle requests for reasonable accommodations properly.

**Which Laws Address Reasonable Accommodations?**

Federal civil rights laws prohibit discrimination against applicants or residents based on disability as well as other classifications. Beyond the following federal requirements, state and local laws offer additional protections. They vary widely and many of them set out more exacting requirements than federal laws, so it's a good idea to hire an attorney who's knowledgeable and experienced in federal, state, and local requirements to review your site's reasonable accommodation policies.

**Section 504.** Under Section 504 of the Rehabilitation Act, which covers multifamily assisted sites, owners must operate each existing housing project so that, when viewed in its entirety, it is readily accessible to and usable by persons with disabilities. Among other requirements, Section 504 requires owners to respond to reasonable accommodation requests from residents or applicants with disabilities for adjustments to site policies and/or physical alterations.

Generally, under Section 504, the owner must make and pay for reasonable structural or physical modifications to dwelling units and/or common areas that are needed by applicants and residents with disabilities, unless these modifications would change the fundamental nature of the project or result in undue financial and administrative burdens. Housing providers not subject to Section 504 may not have to pay for the modification, but they would have to allow it.

An owner does not have to allow a modification unless the resident's health care provider verifies the need for it. Although you may not ordinarily inquire into the nature and severity of an individual's disability, you may do so in response to a request for a reasonable accommodation or modification. Also, the requested physical modification cannot create a structural problem in the building or render it unusable by other residents. **Fair Housing Act.** Under the FHA, all multifamily property owners (not just assisted housing providers) are obligated to operate their facilities in a nondiscriminatory manner and to meet specific requirements to make their properties physically accessible to persons with disabilities.

In addition, the FHA requires housing providers to provide "reasonable accommodations" to persons with disabilities—meaning that an owner may have to modify rules, policies, practices, procedures, and/or
services to afford a person with a disability an equal opportunity to use and enjoy the housing. As guidance issued jointly by HUD and the Department of Justice (DOJ) makes clear, the FHA prohibits discrimination against the disabled by refusing to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied, or to be occupied, by a person with a disability if such modification is necessary to afford such person full enjoyment of the site.
10 COMMON MYTHS THAT COULD LEAD TO FAIR HOUSING COMPLAINTS

MYTH #1: YOU CAN'T GET IN TROUBLE BY TREATING EVERYONE THE SAME
Since fair housing law bans housing discrimination based on certain protected characteristics, it’s natural to think that you can’t be accused of a fair housing violation if you treat everyone the same. As a general rule, that approach may ward off discrimination claims based on many protected characteristics, but it will inevitably lead to a fair housing complaint if you apply it to individuals with disabilities.

By definition, the FHA’s reasonable accommodation provisions require housing providers to make exceptions to rules, policies, practices, or services when necessary to allow an individual with a disability to fully use and enjoy the site. Two of the most common sources of disputes under the FHA’s reasonable accommodation provisions involve assistance animals and parking, but sites face a wide range of requests for exceptions to rules and policies as a reasonable accommodation for an individual with a disability. Examples include requests for live-in aides, transfers to different units, early lease termination, and allowing a cosigner on the lease.

The best way to stay out of fair housing trouble is to develop policies that address particular circumstances rather than the type of people involved, says fair housing expert Doug Chasick. That is, instead of trying to treat all people the same, sites should adopt policies that treat people in similar circumstances the same way to ensure compliance with fair housing laws, he explains.

MYTH #2: ONLY FORMAL REQUESTS FOR ACCOMMODATION MUST BE CONSIDERED
No "magic" words are required to make a request for a reasonable accommodation. An applicant doesn’t have to mention the FHA or use the words "reasonable accommodation," according to the joint HUD/DOJ guidelines on reasonable accommodations.

Although an applicant or resident isn’t entitled to receive a reasonable accommodation unless he requests one, the law doesn’t require that a request be made in a particular manner or at a particular time. The guidelines state that an applicant or resident makes a reasonable accommodation request whenever he makes clear to the housing provider that he’s requesting an exception, change, or adjustment to a rule, policy, practice, or service because of his disability.

Disputes often arise because most requests for reasonable accommodations aren't labeled as such, Chasick says. "It's important to be an "active listener," he adds. Often, people say they need or want something because of some difficulty or limitation. Or it could be a question about whether your site allows something or whether the applicant will be able to do something—which could be a prelude to an informal request for a reasonable accommodation. For example, a prospect may ask whether your site allows pets: if your answer is no, Chasick says that you should follow up with "why?" If the prospect answers that he needs a dog for emotional support, it should be considered a reasonable accommodation request.

The law doesn’t require the request to be in writing or for the person making the request to use your forms or follow your pro-
requires that the impairment substantially limit one or more major life activities, which means that it has a significant impact on activities that are central to daily life, such as seeing, hearing, walking, or caring for oneself.

**Myth #5: You Can Never Ask About the Applicant’s Disability**

It’s true that the FHA usually bars housing providers from asking whether an applicant or anyone in his household has a disability and the nature or extent of any disability. But there’s an exception that permits disability-related inquiries when necessary to respond to a reasonable accommodation request.

The exception allows housing providers to obtain information that’s necessary to evaluate whether a requested accommodation is necessary because of a disability, according to the HUD/DOJ guidelines. But the exception is limited: you can’t ask for documentation when both the individual’s disability and need for the requested accommodation are obvious.

If the individual’s disability is readily apparent—but the need for the requested accommodation is not—then you may ask for further information about the disability-related need for the accommodation. But if the individual’s disability isn’t obvious, then you may request reliable disability-related information to verify that individual meets the FHA’s definition of a person with a disability—and, if necessary, that the requested accommodation is needed because of a disability.
**Myth #9: All Animals Are Pets**

Not all animals are considered pets under fair housing law, so sites with a no-pets policy must grant a reasonable accommodation request by an individual who has a disability-related reason to keep an assistance animal.

It's a mistake to deny a claim simply because you doubt that a resident who asks to keep an assistance animal qualifies under the FHA's definition of an individual with a disability. If the resident doesn't have an obvious disability, then you may ask for verification that he meets the FHA's definition of an individual with a disability. And if the disability-related need for the animal isn't apparent, you may request information to verify that the animal provides support that alleviates at least one of the identified symptoms or effects of the disability.

**Myth #10: You Don't Need a Formal Process for Accommodation Requests**

Although the FHA doesn't require housing providers to have formal rules or procedures for handling accommodation requests, the HUD/DOJ guidelines strongly recommend it. Having formal procedures could help prevent misunderstandings as to the nature of the request, and in the event of a later dispute, provide records that the requests received proper consideration, according to the HUD/DOJ guidelines.

Chasick says it's essential to document all requests for reasonable accommodations and how they were handled. He recommends adopting a written policy that specifically addresses how accommodation requests are handled under certain circumstances and keeping records to show your staff followed the policy for requests involving the same circumstances. If challenged, you'll be able to point to your policy and document that all people under the same circumstances were treated in the same way.

Written policies and procedures also help to keep requests from falling between the cracks. Sites have an obligation to provide a prompt response to an accommodation request, so an unreasonable delay in responding to an accommodation request may be deemed to be a failure to provide a reasonable accommodation.
SECTION 8 RENEWAL PROCEDURES
Understand The Top 5 Changes To The Renewal Guide Book

Guide revisions rock your Section 8 renewal procedures

Section 8 renewals will never be the same - you have a host of new and altered procedures and policies to follow when you're renewing your contract with the U.S. Department of Housing and Urban Development (HUD). In a May 18 transmittal, HUD issued several key changes to its Section 8 Renewal Policy Guide Book:

1. No More Renewal Extensions under MAHRA Section 524

In Chapter 2, HUD has withdrawn the use of Attachment 20 "Project-Based Section 8 Housing Assistance Payments - Extension of Contract Term."

Instead, you must execute a 20-year Renewal Contract with the "Preservation Exhibit," provided in Attachment 1 of Housing Notice 11-31. The Preservation Exhibit basically provides that when the Renewal Contract expires, the contract will renew for an additional term equal to the number of years remaining on the terminated Renewal Contract.

If you already renewed the original Section 8 housing assistance payment (HAP) contract under the Multifamily Assisted Housing Reform and Affordability Act (MAHRA), you can work with the Hub Director or designee to allow early termination of the existing renewal contract, and then renew under the proper means.

If your project is subject to a Full Market-to-Market Renewal Contract under MAHRA Section 515, your only renewal option is Option 3. You must execute a new Full Market-to-Market Renewal Contract for a 20-year term with a completed Preservation Exhibit.

2. Restricted Levels Nixed For Option One B Renewal Rents

Chapter 3 no longer contains the requirement that rents for an Option One B renewal stick to restricted levels (Section 3-2 D, Note 1). Rents for Option One B renewals are no longer required to have use-restricted levels.

3. Use A Current Debt Service In Your Budget-Based Rent Increase Request

In Chapter 6 (Section 6-3 B), HUD now requires that you use current debt service in your budget-based rent increase request, when you're requesting rent adjustments for a multiyear contract. In addition to using current debt service, when requesting a budget-based rent adjustment, you must also submit or have submitted within the past five years a Rent Comparability Study (RCS).
4. No Budget-Based Rent Adjustments If Exceeding Comparable Market Rents

Ensure that the RCS demonstrates that the current rents are below comparable market rents, if you're asking for a rent increase — otherwise, HUD will deny your request, and you'll only receive an Operating cost Adjustment Factors (OCAF) rent adjustment. Therefore, you cannot use a budget basis for rent adjustments in a multiyear contract if the proposed rents exceed the comparable market rents.

In Chapter 16, HUD removes parts of "Other Issues" that refer to original debt service, so that this section is consistent with Chapter 6.

5. New Procedures When Study Rents Exceed Fair Market Rent

In Chapter 9, HUD provides new procedures when Rent Comparability Study rents are more than 110-percent of the Fair Market Rent (FMR) in metropolitan areas or Small Areas Fair Market Rent (SAFMR) for non-metropolitan areas. In this case, the RCS report must include the percentage of properties in the market area with rents exceeding the 110-percent threshold.

Example: "The subject market area within the SAFMR consists of ______ multifamily housing units of which it is estimated ______ % fall above the FMR established for this SA."

Then, the RCS must contain an explanation of the conditions that differentiate the properties below and above the 110-percent threshold. HUD gives examples of such conditions as variations in property condition, age, design/appeal, management, and neighborhood support facilities like shopping, schools, transportation, employment centers and healthcare providers.
Summary of the Proposed Rule Changes

The Housing and Economic Recovery Act (HERA) of 2008 made comprehensive and significant reforms to several HUD programs, including HUD’s Public Housing, Section 8 Tenant-Based Housing Choice Voucher (HCV), and Project-Based Voucher (PBV) programs.

First, the proposed rule would codify the following statutory provisions from HERA into regulations which:

* Amend the definition of annual income to exclude veterans’ disability benefits;
  
  Establish reasonable rent at levels equal or less than comparable units receiving tax credits or non-tenant based federal assistance;

* Remove "cooperative housing" from the PBV and HCV programs;

* Clarify the owner proposal selection procedures for the PBV program;
  
  Allow PHAs to enter into PBV HAP contracts with units in cooperative housing and in high-rise elevator projects;

* Change PBV contract terms from 10 to 15 years;
  
  Eliminate the need for a subsidy layering review for PBV HAP contracts for an existing structure or if the review has been conducted by applicable state or local agencies;
  
  Clarify that the exception to the 25 percent cap on the number of PBV units in a project includes units for the elderly and/or persons with disabilities.

* In addition, the exception categories in a multifamily housing project may be combined;

  * Eliminate environmental reviews for the PBV program for an existing structure, except to the extent that such a review is otherwise required by law or regulation;

  * Require owners of PBV properties to certify that there are no plans to perform rehab work on existing units within one year after the execution of the initial HAP contract; and

  * Permit PHAs to use the higher section 8 rent for certain tax credit units if the LIHTC rent is less than the amount that would be permitted under section 8

  o However, the requirements of rent reasonableness would still have to be met.

  o The rent to owner will not be reduced below the initial rent, unless certain limitations apply.

Second, the proposed rule would clarify and change existing HCV and PBV regulations (outside of the HERA requirements) as follows:

* Add definitions to the regulations for: housing credit agency; project; project-based certificate program; and release of funds.

* Revise the definitions of: excepted units (units in a multifamily building not counted against the 25 percent cap);
existing housing; partially-assisted building; premises; and qualifying families (for purposes of exception to the 25 percent per building cap);

* Require that existing PBV units must satisfy Housing Quality Standards (HQS) requirements within 60 days of the date of selection by a PHA and

* Limit the total amount of work that must be performed to facilitate compliance with HQS to $1,000 per assisted unit;

* Require HUD's approval for an owner to terminate a PBV HAP contract when the rent for any contract unit is adjusted below the initial rent level;

* Require property owners with PBV units not to lease those units to family members, unless a PHA provides a reasonable accommodation for a family members with a disability.

* Eliminate the regulation that allows owners to refuse to renew a PBV lease upon lease expiration

* Owners must have a "good cause" to refuse to renew the lease

* Clarify that HAPs will continue until the tenant rent of a PBV unit equals the rent to the owner

  o After 180 days of no subsidy payments being made on behalf of the family, the unit will be removed from the HAP contract; and

* Clarify that rent reduction is mandatory in PBV units when the results of a subsidy layering review disclose the need for a rent reduction.
Updated Clarification on Changes to Section 8 Renewal Policy

Wednesday, June 27, 2012

The following clarification was issued by HUD on 6/27/2012 concerning the effective date of changes to the Section 8 Renewal Policy.

Dear Multifamily Partners & Colleagues:

On May 18, 2012, the Department issued page changes to the Section 8 Renewal Policy Guide. Two of those changes have an impact on budget-based rent adjustment requests in Option Four. The first requires the use of current debt service in an Owner's budget-based rent increase request and the other permits a budget-based rent increase at the annual anniversary date only if the proposed rents do not exceed comparable market rents.

On June 12, 2012, the Department issued additional guidance related to the effective date of the page changes. Those effective dates have now been further clarified as noted below.

The effective date for both of the page changes described above is 150 days after May 18, 2012 (which is October 15, 2012). Any budget-based rent increase request postmarked prior to October 15, 2012 can be processed under the previous guidance. Any budget-based rent increase postmarked October 15, 2012 or thereafter must abide by the new guidance. This new requirement applies to all Option Four contracts, even multiyear contracts signed prior to May 18, 2012.

The effective dates for the other changes remain the same.

Please contact Stan Houle with questions.

Stanley.R.Houle@hud.gov
RHIIP #277 - Clarification Concerning Effective Date of Recent Section 8 Page Changes

Tuesday, June 12, 2012

RHIIP Listserv Posting #277

**Clarification Concerning Effective Date of Recent Section 8 Page Changes**

On May 18, 2012, the Department issued page changes to the Section 8 Renewal Policy Guide. Two of those changes have an impact on budget-based rent adjustment requests in Option Four. The first requires the use of current debt service in an Owner’s budget-based rent increase request and the other permits a budget-based rent increase at the annual anniversary date only if the proposed rents do not exceed comparable market rents.

The effective date of these page changes is May 18, 2012. Any budget-based rent increase request postmarked prior to May 18, 2012 can be processed under the previous guidance. Any budget-based rent increase postmarked May 18, 2012 or thereafter must abide by the new guidance. This new requirement applies to all Option Four contracts, even multiyear contracts signed prior to May 18, 2012.

The effective dates for the other changes remain the same.
Some months ago, we sent a Client Alert advising that “exception projects” whose rents are close to or above market rents and who might need a budget rent increase should seriously consider making their submissions as soon as possible. We made this recommendation because HUD had advised that the Section 8 Renewal Guide would likely be revised to cap such budget increases at market. Our intent was to ensure that those who might be negatively impacted by this proposed provision get their budgets in before the Renewal Guide was revised.

Last week we sent you HUD’s May 18, 2012 transmittal making certain changes to the Renewal Guide. Among those changes is the requirement forecast above. Budget-based rent adjustments for “exception projects” (i.e., those with contracts that were renewed under Option Four) will no longer be permitted, to the extent those increases exceed comparable market rents.

According to the revised handbook, “This requirement applies to those budget-based adjustment requests submitted 150 days following the effective date of these page changes.” The effective date of these page changes is May 18, 2012. This means that any budget-based rent increases submitted after the middle of October by projects whose current contracts are pursuant to Option Four will have to include a Rent Comp Survey (RCS) with their budget submissions.

It should be stressed that this does not apply to Option Four contract renewals. Those renewals continue to be subject to the “lesser of” test. Second, this does not apply to OCAF increases. It applies only to budget-based rent adjustments submitted by projects whose current Section 8 contract is pursuant to Option Four and who are in the midst of a multi-year contract. In effect, this change puts Option Four projects in a situation very similar to those who renewed under Option Two.

So, what should affected projects do? Keeping in mind that rent adjustments generally can be implemented only on contract anniversary dates, owners and agents whose projects are currently subject to Option Four contracts who believe their rents are close to or above market should immediately review their budgets. Do it now! Preparing a proper budget submission takes time! If it appears a budget increase is needed, make every effort to get that submission in before the middle of October, when the new restriction kicks in.

Going forward, owners and agents of affected projects will need to keep an eye on comparable rents in their market area. If your rents clearly are above market, don’t even think about submitting a budget. If, however, you need a budget increase and your rents are not clearly above market, talk with your appraiser. Get at least an informal idea of where your rents are compared to market, so you can determine if proceeding with a budget and the required full RCS makes sense. That said, we should acknowledge that HUD has indicated that it might make case-by-case exceptions to this new requirement. Unfortunately, nothing further has been said that might clarify what exceptions, if any, might be considered
Special Attention of:  
All Multifamily Hub Directors  
All Multifamily Program Center Directors  
All Multifamily Operations Officers  
All Directors of Project Management  
All Field Counsel  
All Multifamily Housing Owners  
All HUD-Approved Multifamily Mortgagees  
All Housing Finance Agencies  
All Contract Administrators  

Notice H-2012-14  
Issued: August 3, 2012  

Expires: This notice remains in effect until amended, revoked, or superseded  

Cross References:  
Handbook 4350.1—REV.1  

SUBJECT: Use of “New Regulation” Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts to Offset Project-Based Section 8 Housing Assistance Payments  

I. Purpose  

When Owner distributions of surplus cash are limited or prohibited and when HUD determines that project funds are more than the amount needed for project operations, reserve requirements, and any permitted distributions, the excess income is typically required under the applicable new regulation and/or the Section 8 Housing Assistance Payments (HAP) contract to which the project is subject to be deposited into an interest-bearing account, often called the Residual Receipts account, to be used for project purposes. This account (or accounts in cases where these monies are deposited in multiple accounts), however titled or designated, is referred to throughout this Notice as the “Residual Receipts” account. The contents of this account, however titled or designated, are referred to throughout this Notice as “Residual Receipts.” The new regulation and/or the various HAP contract forms used for new regulation projects  

1 The new regulations are as follows: 24 C.F.R. Part 880, in effect as of November 5, 1979; 24 C.F.R. Part 881, in effect as of February 20, 1980; and 24 C.F.R. Part 883, in effect as of February 29, 1980. Section 202/8 projects that are subject to a new regulation Section 8 HAP contract (i.e., one that permits HUD or a State Housing Agency to require that excess project funds be deposited into an interest-bearing account to be used to reduce housing assistance payments or for other project purposes) are also subject to this Notice despite the absence of a provision in 24 C.F.R. Part 891 (formerly Part 885), which governs such projects, that corresponds to 24 C.F.R. 880.205(e), 881.205(e), or 883.306(e). See Section IV. B. of this Notice, which identifies the relevant language regarding the use of Residual Receipts to reduce housing assistance payments that typically appears in new regulation HAP contracts.  

2 For projects subject to 24 C.F.R. Part 883, in effect as of February 29, 1980, the State Housing Agency, rather than HUD, is entitled to make the determination that project funds are more than the amount needed and to require that the excess be deposited into an interest-bearing account to be used for project purposes. See 24 C.F.R. § 883.306(e).
explicitly permit HUD to use Residual Receipts to reduce housing assistance payments. (See 24 CFR §§ 880.205(e), 881.205(e), and 883.306(e)).

This Notice sets forth the policy and procedures for the Department’s use of new regulation Residual Receipts to offset housing assistance payments for projects subject to a new regulation Project-Based Section 8 HAP contract and outlines the obligations and duties of Owners and the responsibilities of HUD Field staff in processing and monitoring the use of this project resource.

II. Background

Although Section 8 Project-Based Rental Assistance (PBRA) was funded in the Fiscal Year 2012 budget at levels sufficient for the Department to continue full funding of all contracts, the Department is committed to achieving savings in order to slow the growth of PBRA expenditures and to effectively manage the account within appropriated levels. This policy change will produce PBRA savings, constrain future expenditures, and ensure the long-term stability and availability of PBRA for all program participants.

III. Applicability and Implementation

A. This Notice applies to all projects that are subject to a new regulation Project-Based Section 8 HAP contract.³ Applicability includes Section 8 New Construction/Substantial Rehabilitation projects subject to 24 CFR §§ 880.205, 881.205, or 883.306, and projects that are subject to both a Section 202 Direct Loan and a new regulation Section 8 HAP contract.

B. This Notice does not apply to Section 202 and Section 811 projects with Project Rental Assistance Contracts (PRACs) and Project Assistance Contracts (PACs).

C. This Notice will be effective with vouchers submitted 60 days after issuance of this Notice.

IV. Authority

As stated above, authority for the Department to use new regulation Residual Receipts to offset Section 8 HAP payments is found in the new regulations and/or in new regulation HAP contracts.

A. There is regulatory authority in 24 CFR §§ 880.205(e), 881.205(e), and 883.306(e).

³The regulatory schemes codified in 24 C.F.R. §§ 880.104(a), 881.104(a), and 883.105(a) establish the universe of projects to which the applicable new regulation applies. As noted in footnote #1, however, Section 202/8 projects that are subject to a new regulation Section 8 HAP contract (i.e., one that permits HUD or a State Housing Agency to require that excess project funds be deposited into an interest-bearing account to be used to reduce housing assistance payments or for other project purposes) are also part of this universe, despite the absence of a regulation in 24 C.F.R. Part 891 (formerly Part 885) that corresponds to 24 C.F.R. 880.205(e), 881 C.F.R. 881.205(e), or 883.306(e).
1. 24 CFR § 880.205(e): If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution[s], HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.

2. 24 CFR § 881.205(e): If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution[s], HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.

3. 24 CFR § 883.306(e): If the Housing Finance Agency (HFA) determines at any time that surplus project funds are more than the amount needed for project operations, reserve requirements and permitted distributions, the HFA may require the excess to be placed in a separate account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess project funds must be remitted to HUD.

B. There is corresponding authority in the HAP contracts for new regulation Part 880, Part 881, Part 883 projects, and for Section 202/8 projects that are subject to a new regulation Section 8 HAP contract (i.e., usually in section 2.6 of such contracts). The contract provisions are typically phrased as follows: “Withdrawals from this [residual receipts] account will be made only with the approval of HUD [for Part 883 projects of the HFA] and for project purposes, including the reduction of housing assistance payments.”

V. Programmatic Summary

A. To the extent that Residual Receipts are available at a new regulation project, Owners are allowed an initial reserve (“Retained Balance”) in an amount equivalent to $250 per unit to use for project purposes. HUD will consider approving requests for releases from the account in accordance with the outstanding procedures found in HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing, Chapter 25, “Residual Receipts,” paragraph 25-9.

B. To the extent Residual Receipts are available at a new regulation project, Owners may use Residual Receipts to fund a Service Coordinator program, subject to HUD approval. The $250 per unit Retained Balance is net of the Residual Receipts necessary to fund a Service Coordinator program. That is, Residual Receipts funds in excess of the Retained Balance may be used to fund a Service Coordinator Program prior to offsetting Section 8 HAP payments.
C. Residual Receipts account balances in excess of $250 per unit must be applied on a monthly basis to offset Section 8 HAP payments up to the full amount of the monthly subsidy request, depending upon the amount of Residual Receipts available for the offset. Monthly offsets must continue until the Residual Receipts account reaches the Retained Balance level of $250 per unit.

D. Owners must follow the instructions in Section VI to voucher for offset of Section 8 HAP payments.

E. Owners of projects with Residual Receipts account balances at or below the Retained Balance shall voucher for full monthly HAP payments through the Tenant Rental Assistance Certification System (TRACS) in accordance with existing procedures.

F. At the end of the project’s fiscal year, all surplus cash remaining after payment of any permissible distributions must be deposited into the project’s Residual Receipts account.

G. If, after all Residual Receipts have been applied to offset Section 8 HAP payments and the Residual Receipts account balance again exceeds the Retained Balance level of $250 per unit due to an annual deposit of surplus cash, offsets of Section 8 HAP payments must be re-initiated.

VI. Owner Requirements

A. In order to accomplish the Offset Process, project Owners must submit a miscellaneous payment request through the Contract Administrator along with their electronic monthly HAP voucher. The request must include: (a) the amount of the offset, expressed as a negative amount and (b) the text phrase “RR OFFSET” in the comment field, along with the actual offset amount inserted.  

1. The miscellaneous payment request must be sent to “Field Office Initiated Accounting Adjustment,” with a code of “FORO.” TRACS will automatically deduct the offset amount from the total voucher amount approved, thus assuring that the proper amount will be paid via TRACS.

2. When making the miscellaneous payment request, Owners must simultaneously submit form HUD-9250, Funds Authorizations for Use of Reserve for Replacement or Residual Receipts, to the HUD Field Office as documentation of the offset.

3. Incomplete submissions will delay processing. Field Offices will return incomplete submissions to Owners with a letter detailing the deficiencies.

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4 For example, if the project is using $1,000.00 of Residual Receipts each month, the entry would be: “RR OFFSET- $1,000.00.”
B. Owners shall submit Annual Financial Statements, which include surplus cash computation sheets, in the form and to the entity currently required by the Department, within 90 days of the end of the annual fiscal period. Owners who are not required to file annual financial statements shall submit a year-end certified statement to their local HUD Office, providing total disbursements as well as the beginning and year-end balance in the Residual Receipts account.

C. At the end of the project’s fiscal year, all surplus cash remaining after payment of any permissible distributions must be deposited into the project’s Residual Receipts account and shall be used to offset Section 8 HAP payments based on the requirements and procedures established in this Notice.

VII. Hub/Program Center Responsibilities

A. Owner Submissions of HUD-9250

1. Hub/PC staff shall date-stamp Owners’ submissions upon receipt and process them within 10 business days.

2. Hub/PC staff shall return incomplete submissions to Owners immediately with a formal letter listing the deficiencies in the submission.

B. Reviews and Approvals

1. Prior to the first required offset of Residual Receipts, the Hub/PC shall notify the PBCA or TCA at least 45 days in advance of the proposed effective date of the offset. The effective date of the offset will be the first day of the month which follows the conclusion of the 45-day notification period.

   a. Example #1: If the Hub/PC notifies the PBCA or TCA that HUD has directed the offset on June 15th, the offset will be made effective on August 1st.

   b. Example #2: If notification of offset is given on May 1st the offset may be made effective on July 1st.

2. The Field Office Project Manager shall review and assure that the offset amount is correct, and notify the PBCA regarding the amount of the offset.

3. The Hub/PC Director or designee shall sign the request.

4. The Hub/PC shall maintain copies of all approved releases in accordance with the document retention regulations (HB 2225.6 – HUD Records Disposition Schedules, Appendix 10).

5. The Hub/PC shall submit form HUD-9250 authorizing releases to the
project’s Contract Administrator (if appropriate) and to the mortgagee of, in the case of a Section 202/8 project, to the private bank that maintains the project’s Residual Receipts account.

C. Monitoring

The Hub/Program Center shall:

1. Keep track of the remaining balance in the Residual Receipts account available for offsetting Section 8 HAP payments.

2. Ensure that Owners are using Residual Receipts to offset Section 8 HAP payments when the account is in excess of the Retained Balance.

3. For those for which they are responsible, review Owners’ annual financial statements to assure proper accounting of withdrawals from the Residual Receipts account.

4. After each release, enter comments into the “Servicing” screen of the Integrated Real Estate Management System (iREMS) stating the:

   - Date approval was given to use Residual Receipts to offset Section 8 HAP payments, and

   - Amount approved.

(See Attachment #1 for example.)

VIII. Headquarters Responsibilities

The Office of Asset Management shall process Owners’ appeals of decisions that cannot be resolved at the Hub or Program Center level. Owners must submit a letter describing the issue, along with supporting documentation, to the Hub or Program Center. The Hub in turn, will forward the Owner’s appeal to the Director of Asset Management for response.

If you have questions, please contact the Project Manager in the Hub/Program Center with jurisdiction over the subject project or the Desk Officer in the Office of Asset Management, Headquarters.

Carol J. Galante
Acting Assistant Secretary for Housing – Federal Housing Commissioner

Attachment 63
Attachment #1

“Servicing” Screen of the Integrated Real Estate Management System (iREMS)

<table>
<thead>
<tr>
<th>Associations to Property</th>
<th>Reserve Tracking</th>
<th>Use Restriction List</th>
<th>IRP List</th>
<th>Other Public Subsidies List</th>
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**Request for Release of Funds Detail - Add**

- **Type of Request:** Residual Receipts
- **Date Received:** 05/29/2012
- **Amount Requested:** $12560
- **Date Approved:** 06/01/2012
- **Amount Approved:** $12560
- **Comments:** Releasing Residual Receipts to offset the June 2012 Section 8 voucher.
For Instructions, Public Burden Statement, and Privacy Act requirements: See Page 2.

<table>
<thead>
<tr>
<th>Reserve for Replacements Fund</th>
<th>Residual Receipts Fund</th>
<th>Project Number:</th>
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Is this withdrawal request to replace appliances and/or major components with energy efficient products/systems?

- [ ] Yes
- [ ] No

Mortgagee Loan Number: (Optional)

Property Address: (Include City, State, and Zip Code)

To: (Mortgagee)

Comments: (Optional)

This is your authority to release the following amounts from the reserve:

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<tr>
<th>Purpose</th>
<th>Amount</th>
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<td><strong>Total Amount</strong></td>
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Check (X) appropriate box:

- [ ] An inspection made on the date of (mm/dd/yyyy) __________ revealed satisfactory replacement and/or installation.
- [ ] An inspection will be made on the next visit to the property. Satisfactory replacement and/or installation will be determined at that time.

This Office has approved (Check (X) appropriate boxes.) This is your authority to adjust the Reserve requirements accordingly. This authority is revocable upon written notice from HUD.

- [ ] A suspension of Deposits to the Reserve from the date of (mm/dd/yyyy) ________ to the date of (mm/dd/yyyy) ________
- [ ] A suspension of Deposits to the Reserve so long as a balance of $__________ is maintained.
- [ ] A change in the Monthly Deposit to the Reserve from $__________ to $__________ effective the date of (mm/dd/yyyy) ________ through the date (mm/dd/yyyy) ________

Remarks (optional)

To: (Mortgagor/Managing Agent)

Name of Hub Director or Program Center Director: (please type or print)

Signature

City State Date (mm/dd/yyyy)
**Funds Authorizations**

**U.S. Department of Housing and Urban Development**  
Office of Housing  
Federal Housing Commissioner

**Instructions:** Indicate the Fund for the request and provide the information for each section as requested. Owners/Agents must also submit the following with this form:

1. A narrative providing a detailed description of the work performed or to be performed;
2. Copies of paid invoices if the withdrawal request is for reimbursement for work that has been performed;
3. If a bid exceeds $25,000 than copies of bids may required. Please refer to HUD Handbook 4350.1 Chapter detailed guidance;
4. Mortgagor Certification (refer to HUD Handbook 4350.1, REV-1); and,
5. A list of appliances and/or major components that will be replaced along with a notation of whether or not the replacement items will be energy efficient products. If replacement items are not energy efficient products, the owner/agent must provide a justification.

**Public reporting burden** for this collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. This information is required to obtain is required to obtain benefits. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

The regulations at 24 CFR Part 880.601 and 24 CFR Part 880.602 authorizes the Secretary of the Department of Housing and Urban Development to effectively monitor withdrawals from the Reserve for Replacements and/or Residual Receipts Funds. This information collection sets forth the information that must be reviewed and approved by HUD in order to withdraw funds from these accounts. While no assurances of confidentiality are pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

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**Mortgagee:** Retain this record for three years.  
**Distribution:** One copy to Mortgagor and HUD files.  
Page 2  
Form HUD-9250  
Ref. Handbook 4350.1, REV-1  
1/2008
For Instructions, Public Burden Statement, and Privacy Act requirements: See Page 2.

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Remarks (optional)

To: (Mortgagor/Managing Agent)

Name of Hub Director or Program Center Director: (please type or print)

Signature

City State Date (mm/dd/yyyy)
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