

To: OHFA Multifamily Property Owners and Managers
From: Brian Carnahan, Director, Office of Program Compliance
Re: OHFA Compliance Guidance
Date: December 17, 2013

Introduction

The following guidance addresses a number of compliance issues, including recent HUD guidance relating to HOME Program utility allowances, revisions to the HUD Handbook 4350.3, verifying benefit debit card balances, implementing the Violence Against Woman Act, the impact of same-sex marriage on Housing Tax Credit compliance, use of foil on stove tops and in ovens, submission of review report responses, housekeeping, and units inaccessible at the time of review. Where appropriate, specific recommendations to which readers may wish to pay particular attention are in *italics*.

HOME Program Utility Allowances

When the HOME Program Final Rule was issued in July 2013, some concerns were expressed about a provision requiring the approval of a project specific utility allowance for each HOME project. The Rule prohibits use of the local Public Housing Authority Allowance (PHA) as the default utility allowance. November 22, 2013, HUD clarified in a Frequently Asked Question answer that the requirement to establish a project specific utility allowance applies only to projects awarded HOME funds after January 24, 2015. Projects funded with HOME funds before this date can continue to use a PHA utility allowance.

4350.3 Change 4 –Verifications, Foster Children and Adults, and Retirement Account Balances

Change 4 to HUD Handbook 4350.3 REV-1 was issued by HUD on August, 7, 2013. In a revised transmittal, HUD indicated owners and managers had until December 15, 2013 to implement all non-TRACs (Section 8 and related program system) requirements. While intended for HUD programs, the “4350” serves as guidance for calculating income for the Housing Tax Credit Program. While Change 4 includes a number of revisions relevant to HUD programs, the most critical for the Housing Credit Program involves the use of documentation from third parties

provided by the resident or applicant.

In prior versions of the 4350.3, the owner was obligated to make a first attempt to get documentation directly from the source (e.g. bank) before using any documentation provided by the resident or applicant. The 4350.3 now allows the owner/manager of a HUD subsidized project to use documentation from a third-party source supplied by the applicant or resident, provided the issuance date of the documentation is within 120 days of the effective date of the certification (see Section 5-13). For example, if the resident discloses a checking account on his/her Sworn Income and Asset Statement, the owner/manager can use recent bank statements to determine the value of the checking account, instead of forwarding verification to the bank.

HUD requires projects receiving rental subsidies to use the Enterprise Income Verification system (EIV) to verify resident or applicant income. In effect, EIV serves as verification from the employer since the data used in EIV is from information submitted to the federal government for tax reporting purposes. Change 4 does not allow owners to bypass EIV in favor of third-party documentation provided by the resident. Note: EIV cannot be used to certify or recertify residents for purposes of the Housing Tax Credit Program.

For purposes of certifying and recertifying income for the Housing Tax Credit Program, *OHFA requires owners/managers to send OHFA required verification forms to employers and other parties. Use of third-party documents provided by the resident – examples include pay stubs and bank statements – is prohibited unless the owner/manager can demonstrate that the verification source is generally unresponsive or charges a fee when processing verification requests.* Include a clarification record in the resident file to demonstrate due diligence. When using resident provided third-party documents, owners and managers should carefully evaluate all documentation provided by the applicant or resident to ensure the documentation is satisfactory and free of evidence of tampering.

Change 4 addresses the status of foster adults and foster children. Section 5-10 clarifies that the dependent deduction does not apply to foster children. *Foster children and foster adults are not to be considered dependents.* Thus, the income attributable to either a foster child or adult should be included in the income calculation.

In Section 5-7 (G)(4) (“Balances held in retirement accounts”), HUD instructs owners not to include the balance of retirement accounts in the calculation of income from assets if the resident is receiving periodic payments. *The definition of periodic payment used by OHFA is a payment that occurs a minimum of annually, generally around the same time. The payment must have been received in two or more consecutive years for a “periodic payment” to exist. If the resident can provide evidence that a contract or other agreement that provides for a schedule of payments is in place, the initial payment can be considered periodic.*

Debit Cards – Social Security, Wages, and Other Benefits

Note: A version of this guidance was issued to OHFA's partners via Constant Contact on March, 8, 2013.

Effective March 1, 2013, HUD issued guidance in response to the suspension of the issuance of paper Social Security checks. Social Security benefits previously issued via check are now received by direct deposit or via the Direct Express debit card. Owners and managers of multifamily housing projects monitored by OHFA such as Housing Tax Credit and HOME projects should implement the guidance as described below. Please note the funds on the debit card are not generating any interest payments, therefore the income from the debit card balance would be zero. Refer to the example below to determine how the payment and the debit card balance should be listed on the OHFA Tenant Income Certification.

Example:

Rose Flowers receives a Social Security payment in the amount of \$700 per month via a Direct Express Debit Card. At the time of certification, the manager must count \$8,400 as Social Security income (12 X \$700), and list it in the income section (Part III) of the OHFA Tenant Income Certification. The manager verifies via an ATM slip that Rose has a balance of \$214.91 on her Direct Express Debit Card. The \$214.91 will be listed as the cash value of the debit card in the asset section (Part IV) of the Tenant Income Certification.

The U.S. Social Security Administration has a new policy which will eliminate the option for Social Security and SSI recipients to receive their benefits in the form of paper checks beginning on March 1, 2013. Recipients will continue to have the option to use direct deposit for their benefits or they may choose to receive a "Direct Express Debit Card." The debit card is automatically loaded with a recipient's benefits on the appropriate payment day of each month. The card is not associated with the recipient's bank account and funds cannot be added to the card by the card holder.

We have received several inquiries about the Direct Express Debit Card and how it will affect income and asset calculations for tenants of HUD subsidized properties. In order to remain consistent with HUD regulations, benefits received through direct deposit OR the Direct Express Debit Card will continue to be treated as income. The balance on the Direct Express Debit Card is also considered an asset and will be verified consistent with existing savings account verification requirements. Specifically, residents who receive their benefit on a Direct Express Debit Card will need to provide an account balance no more than 120 days old at the time of initial certification or recertification. This balance can be obtained from an ATM, through the online account service, or a paper statement. The verification document must identify the account and the account holder. If



the total household assets do not exceed \$5,000, no income will be derived from this asset. If household assets exceed \$5,000, assets should be imputed at the standard rate of 2%.

Other income received by residents of Housing Tax Credit projects, such as child support, which is deposited to a debit card, must be verified. The amount received is considered income, while the balance on the card is treated as it would be if it were in a savings account (Note: some verifications may refer to the card as a “checking account”. Treat the account as a savings account). Appropriate documentation includes a verification completed by the appropriate agency, an ATM or similar receipt showing the balance, or a web-based verification provided by the resident. When using an ATM slip, the validity of the ATM slip can be verified by comparing the card number and the card number (often only four numbers) included on the ATM slip.

To accommodate debit cards, OHFA plans to modify the Sworn Income and Asset Statement (SIAS). Until a revised SIAS form is issued, debit cards can be listed as a savings account. Include in the file a clarification record describing the type of debit card held by the applicant or resident.

Violence Against Women Act (VAWA)

On March 7, 2013, the Violence Against Women Act (VAWA) was expanded to include the Low Income Housing Tax Credit Program. The protections in VAWA cover persons residing in projects receiving HUD or RD subsidies, as well as residents in Housing Tax Credit properties. While “Women” is included in the name of the Act, the VAWA protections apply to both males and females. Public housing authorities, owners and managers participating in the covered housing programs listed below must comply with VAWA.

The following housing programs are covered by VAWA:

- Department of Housing and Urban Development (HUD)
 - Public housing;
 - Section 8 Housing Choice Voucher program;
 - Section 8 project-based housing;
 - Section 202 housing for the elderly;
 - Section 811 housing for people with disabilities;
 - Section 236 multifamily rental housing;
 - Section 221(d)(3) Below Market Interest Rate (BMIR) housing;
 - HOME;
 - Housing Opportunities for People with Aids (HOPWA);
 - McKinney-Vento Act programs.
- Department of Agriculture
 - Rural Development (RD) multifamily housing programs such as 515 or 538



- Department of Treasury
 - Low-Income Housing Tax Credit (LIHTC)

VAWA protects anyone who is living in, or seeking admission to, any of the covered housing programs and is a victim of actual or threatened domestic violence, dating violence, sexual assault or stalking, or an “affiliated individual” of the victim such as a spouse, parent, brother, sister, or child of that victim; or an individual to whom that victim stands in loco parentis (“in the place of a parent”); or an individual, tenant or lawful occupant living in the victim’s household.

VAWA prohibits an applicant or resident from being denied, terminated, or evicted from housing on the basis that the applicant or resident is or has been a victim of domestic violence. An incident of actual or threatened domestic violence, dating violence, sexual assault or stalking will not be construed as a serious or repeated violation of the lease by the victim and will not be good cause for terminating the assistance or tenancy of the victim.

The Act also prohibits any person from being denied housing solely on the basis of criminal activity, if that activity is directly related to domestic violence by a household member, guest or any person under the resident’s control, if the resident or affiliated individual of the resident is the victim.

PHAs, owners and managers of the covered housing programs are allowed to bifurcate a lease to evict or terminate assistance to any resident or lawful occupant who engages in criminal acts of violence against an affiliated individual or others without penalizing other residents.

If a PHA, owner or manager evicts, removes or terminates an individual because of criminal acts of violence, and that individual is the only resident eligible to receive the housing assistance, then any remaining resident will have the opportunity to establish eligibility for the assistance. If the remaining tenant cannot establish such eligibility, then the PHA, owner or manager must provide the resident reasonable time (approximately 30-45 days) to find new housing or to establish eligibility under another covered housing program.

VAWA allows, but does not require, PHAs, owners and managers to make a written request to an individual for certification that he or she is a victim of domestic violence. An individual may certify via a form approved by the appropriate federal agency. This form must:

- (1) state that an applicant or resident is a victim of domestic violence, dating violence, sexual assault or stalking;
- (2) state that the incident that is the grounds for protection meets the requirements under the statute; and
- (3) include the name of perpetrator, if the name is known and safe to provide.

HUD provides form HUD-50066 Certification of Domestic Violence, Dating Violence or Stalking (11/2006). OHFA recommends use of this form to assist victims in documenting their qualification for VAWA protections.

Other permissible documents for certification include:

- One signed by a victim and a mental health professional under penalty of perjury,
- An administrative record to document the abuse, or
- A federal, state, or local law enforcement, court or administrative record

After a PHA, owner or manager has requested certification in writing, an applicant or resident has 14 business days to respond to the request. If an individual does not provide the documentation within the 14 days, a PHA, owner or manager may deny, terminate or evict for good cause.

Each federal agency must adopt a model emergency transfer plan to be used by PHAs and owners or managers of housing assisted under the covered housing programs. This transfer plan must allow survivor residents to transfer to another available and safe dwelling unit under a covered housing program if:

- (1) the resident expressly requests the transfer and
- (2) either the resident reasonably believes that the resident is threatened with imminent harm from further violence if the resident remains within the same assisted dwelling unit, or where the resident is a victim of sexual assault and the sexual assault occurred on the premises within 90 days before the transfer request

OHFA expects the IRS and other agencies to offer additional guidance on the application of VAWA to programs such as the Housing Tax Credit Program. *Owners and managers of covered housing listed above should immediately implement VAWA as described by revising any leasing and tenant selection policies. Should an owner or manager encounter a conflict between VAWA and a Housing Tax Credit rule, such as the full-time student rule, the owner/manager may contact OHFA for additional guidance.*

Same-Sex Marriage

Note: A version of this guidance was included in the OHFA Fall 2013 Quarterly Update.

On August 29, 2013, the Internal Revenue Service issued Revenue Ruling 2013-17. *The Ruling clarifies that same-sex couples who are married (the guidance is not applicable to other formal means of recognizing a relationship such as a domestic partnership) under a valid state law, are considered spouses as defined in Federal law.* This change will most likely impact the application of the “student rule”, whereby a married couple eligible to file a joint Federal tax return can claim an exception to the student rule. Owners and managers are encouraged to treat all couples claiming

to be married the same. *If the owner/manager requires evidence such as a marriage license or certificate to determine if a couple meets the “married and eligible to file a joint tax return” exception to the student rule, that requirement must be applied to all couples claiming to be married.*

Physical Finding – Use of Foil on Burners and in Ovens

In an effort to maintain a clean stove top and oven, many residents wrap burner drip pans with aluminum foil or line the bottom of the oven with foil. OHFA has begun to cite the use of foil as a physical inspection finding. The Agency has elected to do so after researching the safety issues involved. Use of foil can be hazardous when using electric and gas appliances, resulting in arcing in electric appliances and reducing air flow in gas appliances. *When foil is present on stove tops or ovens, the owner must notify the resident to remove and not replace the foil. The corrective action should be documented with a copy of the notice provided to the resident.*

Housekeeping and Blocked Egress – Documenting Corrective Action

When a unit is cited for housekeeping issues or blocked egress (e.g. a dresser in front of the only window in a bedroom) the owner must notify the resident to take steps to address the situation. Blocked egress may be considered an Exigent Health and Safety violation, requiring that the situation be corrected within 24 hours, with notice of the correction sent to OHFA within 72 hours. Correspondence related to the corrective action, for example a letter to the resident describing the need to maintain the unit in an acceptable condition, should be included with the response.

Units or Rooms Not Accessible at the Time of Review

Occasionally during a review, it will be discovered that a resident has changed the locks on his unit or has locked the door to a room in the unit. When a unit cannot be accessed, OHFA selects another unit to ensure the inspection sampling requirements are met. The inability to gain access to a unit could be considered an Exigent Health and Safety violation. *Effective as of the date of this memo, OHFA requires owners and managers to gain access to the unit or room and report its condition to OHFA as part of the review response.* Any correspondence to the resident regarding the replacement of the locks or other lease violations should be included in the response.

Review Responses

Upon receipt of a review report from OHFA, owners and managers have 60 days to respond with evidence of corrective action. OHFA Compliance Analysts prefer to receive owner responses as a complete package instead of multiple submissions of the corrective actions. Submitting all documentation at one time ensures it is received and promptly reviewed. Processing of the response is also faster if the documentation is submitted in the same order as the review report.