



# The CA Quarterly Review

Fall 2013 Edition

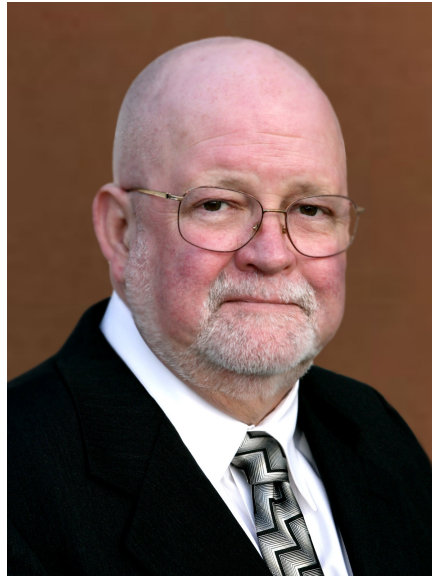
September 23, 2013

North Tampa Housing Development Corporation

## From the Desk of Don Shea, Director and Contract Administrator

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I hope everyone had a great summer. While we still don't have much relief from the heat yet, the Fall season is now upon us. A lot has transpired over the past several months. From HUD's recent statement, you should know the recent awarding of PBCA contracts is currently on hold. To say this has been a long process is an understatement and I thought it would be helpful to provide a summary of the process and where things currently are.

On July 1, 2011, The U.S. Department of Housing and Urban Development (HUD) announced the PBCAs who would perform contract administration duties for the Section 8 program. This was followed by several protests regarding the manner in which the awards were decided. Shortly thereafter, HUD withdrew 42 of the 53 PBCA awarded contracts with the intent to re-compete them again under a new Notice of Funding Availability (NOFA). The 11 awards which did move forward were for uncontested contracts in 9 states and 2 territories: Iowa, Maine, Minnesota, Montana, New Hampshire, North Dakota, Puerto Rico, South Dakota, Vermont, Wyoming and U.S. Virgin Islands. NTHDC was awarded the U.S. Virgin Islands PBCA contract and has been the PBCA for the territory since 10/1/2011. On March 10, 2012, HUD released a new NOFA to re-compete awards of the 42 contracts which were withdrawn from the previous procurement. This introduced significant changes to the selection process and expectations under the PBCA contract. Some of those changes include "risk based" management reviews, preference for in-state applicants, a cap on the administrative fee and changes to the scoring of the application.

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## **From the Desk of Don Shea, Director and Contract Administrator**

Following the release of that NOFA, several groups filed protests with the Government Accountability Office (GAO). The protests were based on the use of the NOFA and the significant restrictions it applied to open competition.

In August 2012, a GAO decision sided with the groups protesting and stated that the NOFA used by HUD to obtain bids for the 42 states was improper. GAO recommended the NOFA be removed and replaced with a contract procurement. HUD was provided up to 60 days to respond to the GAO recommendation. Their response exceeded the allowed time and in December 2012 HUD informed GAO that it would move forward with the NOFA. This was followed by several PBCAs filing lawsuits against HUD stating the Notice of Funding Availability (NOFA) was not appropriate for awarding of the PBCA contracts.

In February 2013, additional arguments were heard in the U.S. Court of Federal Claims in Washington, DC. These centered on HUD's use of a NOFA to select PBCA and the restriction on competition. Out-of-state applicants in states where qualified in-state applicants submitted bids were fundamentally eliminated from competing due to the in-state preference. In April 2013, the U.S. Court of Federal Claims ruled in favor of HUD allowing them the authority to use the NOFA process. This was followed by a joint appeal from contract administrators and the case was escalated to the Court of Appeals in May 2013.

In August 2013, HUD moved forward with the NOFA process and announced PBCA awards for the 42 states that were part of the competition. Following this announcement, an injunction was granted by the court. This decision prevents HUD from awarding the new contracts in the 42 states until this case is decided by the Appeals court. HUD released the following statement in response..."On August 27, 2013, the United States Court of Appeals granted the Plaintiff-Appellants' motion for a stay pending appeal. Thus, HUD may not execute the new ACCs until the case is resolved. Further, no transition activities should occur until further notice. Any additional information will be provided as soon as it is available."

With the injunction, there will be no transition taking place until the case is decided by the court. NTHDC will continue to fulfill its duties as PBCA in the state of Florida and the current PBCA contract with HUD is in effect until December 31, 2013. We anticipate another contract extension at some point while the court decides the matter. For the U.S. Virgin Islands, the PBCA contract also runs through the end of 2013. HUD has indicated a two year extension will follow for the U.S. Virgin Islands PBCA contract.

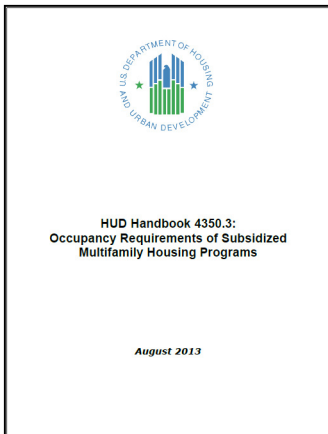
It is difficult to summarize a process that has been going on for an agonizing number of years now, but we wanted you to know the status of the situation that is beyond our control.

Regards,

Don Shea

Director and Contract Administrator, NTHDC

## HUD Issues Changes to the Occupancy Handbook 4350.3



On August 7, 2013, HUD published Change 4 to the HUD Handbook 4350.3 REV-1 which was effective on that day. Change 4 includes guidance that was previously issued through various HUD Notices regarding issues such as: The Violence Against Women Act, Enterprise Income Verification (EIV), Final Rule regarding Individuals Subject to State Lifetime Sex Offender registration, the Supplemental Information to Application for Federally Assisted Housing, and the Rent and Income Determination Requirements in Public Assisted Housing Programs.

The information published in Change 4 does not constitute new information and should not create any new compliance issues.

The Handbook update is inclusive the previously issued HUD guidance noted below:

- ◇ The Violence Against Women Reauthorization Act [Housing Notice 2013-23](#)
- ◇ Enterprise Income Verification [Housing Notice 2013-06](#)
- ◇ State Lifetime Sex Offender in Federally Assisted Housing - [Housing Notice 2012-11](#)
- ◇ Supplemental Information to the Application—[HUD Form 92006](#)

You can find Handbook 4350.3 REV-1 CHG 4 [here](#).

## What's New on HUDClips

### Posted Date

9/17/2013	<a href="#">HUD Form 9250</a>	Funds Authorization Form
8/26/2013	<a href="#">Housing Notice 2013-25</a>	Updated Guidelines for Continuation of Interest Reduction Payments after Refinancing: "Decoupling" as allowed by the National Housing Act, under Section 235(e)(2)
8/21/2013	<a href="#">4350.3 REV-1 CHG4</a>	Occupancy Requirements of Subsidized Multifamily Housing Programs (Change 4)
8/15/2013	<a href="#">Housing Notice 2013-23</a>	Change in Annual Financial Statements (AFS) Submission Requirements for Some Multifamily Housing Projects
8/6/2013	<a href="#">FR-5720-N-01</a>	The Violence Against Women Reauthorization Act; Overview of Applicability to HUD Programs
7/29/2013	<a href="#">Housing Notice 2013-21</a>	Implementation and approval of owner adopted preferences for individuals or families experiencing homelessness

## **HUD Notice 2013-23: Change in Annual Financial Statement (AFS) Submission Requirements for Some Multifamily Housing Projects**

This Notice revises the financial reporting requirements for small multifamily housing projects. Specifically, it relieves the Owners of small multifamily projects of the burden and cost of submitting audited financial statements. “Small multifamily housing project” means a project for which the Owner is under an obligation to submit an audited financial statement but receives less than \$500,000 in combined federal financial assistance. Such Owners will be permitted to submit an Owner Certified financial statement provided they receive less than \$500,000 in combined federal financial assistance. Combined federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance.

HUD participates in the Rental Policy Working Group (RPWG) along with the White House Domestic Policy Council, the National Economic Council, the Office of Management and Budget (OMB), the United States Department of Agriculture (USDA) and the U.S. Department of Treasury. The initial focus of the RPWG was to align financial reporting requirements of HUD’s and USDA’s multifamily housing programs. The RPWG examined the financial reporting requirements for HUD and USDA and found them to be vastly different. The RPWG determined that both agencies should have the same audit standards and that the requirements should be based on the dollar amount of risk exposure rather than the number of units in a multifamily development. As a result, HUD and USDA jointly decided that the audit threshold should initially be set at a level of \$500,000 in combined federal financial assistance.

Owners of affected projects will continue to submit financial statements to HUD electronically via the Real Estate Assessment Center’s (REAC’s) Financial Assessment Subsystem - Multifamily (FASS-MF). The financial statement must be presented in accordance with Generally Accepted Accounting Principles (GAAP) including a full set of notes to financial statements. However, owner-certified submissions will not contain an auditor’s opinion or an auditor’s report on compliance and internal controls.

The FASS system will continue to track overdue financial statements and make the appropriate referrals to the Departmental Enforcement Center (DEC) for Owners who fail to submit on time. During the submission process, the system will prompt Owners to certify that they receive less than \$500,000 in combined federal financial assistance and the system will perform a crosscheck of HUD’s databases to verify the owner’s certification. Each submission will be reviewed by REAC for compliance and will be subject to all of the FASS-MF system’s internal compliance checks.

Complete details of the notice and the new AFS requirements for properties affected by this notice can be found here: [HUD Notice 2103-23](#)

## HUD Announces Delay in Implementation of 202(D)

Lanier Hylton, Director of Program Systems Management at HUD HQ, recently announced a delay in the implementation of TRACS 202D. Hylton offered this message:

*“TRACS 202(d) implementation will be delayed due to pending paperwork approval for new and updated HUD Forms. HUD is working with industry partners to publish a new implementation date for TRACS 202(d) that will not be disruptive and/or costly to our partners.”*

It isn't known when the implementation date for TRACS 202(d) will be announced, however it seems as though the delay is, at least in part, due to the Office of Management and Budget's (OMB) timeline for approving the forms related to 202(d) such as the HUD-50059. Currently, OMB does not have a timeline for approving the necessary forms.

NTHDC will post an announcement once we have word from HUD regarding the implementation date.

## HUD Announces First Ever Same-Sex Housing Discrimination Study

The U.S. Department of Housing and Urban Development (HUD) released the nation's first-ever national study examining housing discrimination against same-sex couples in the private rental market. The study, [\*An Estimate of Housing Discrimination Against Same-Sex Couples\*](#), measures the treatment same-sex couples receive from rental agents when inquiring about apartments advertised online, as compared to how otherwise similar heterosexual couples are treated.

According to HUD's study, same-sex couples experience unequal treatment more often than heterosexual couples when responding to internet ads for rental units, and findings show that gay male couples experience more discrimination than lesbian couples.

*“President Obama and this administration have been unmatched in our efforts to ensure equal and fair treatment of lesbian, gay, bisexual and transgender (LGBT) persons and communities,” said HUD Secretary Shaun Donovan. “Following the president's lead, HUD has taken historic steps in the area of fair housing to ensure that we fulfill our nation's commitment to equality. As this study shows, we need to continue our efforts to ensure that everyone is treated the same when it comes to finding a home to call their own, regardless of their sexual orientation.”*

*“A person's sexual orientation or gender identity should not be a reason to receive unfavorable treatment when searching for housing,” said Bryan Greene, HUD Acting Assistant Secretary for Fair Housing and Equal Opportunity. “HUD is committed to making sure that LGBT individuals have equal access to housing opportunities.”*

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## HUD Announces First Ever Same-Sex Housing Discrimination Study

HUD's study is based on nearly 7,000 email tests conducted in 50 metropolitan markets across the country between June and October of 2011. For each paired test, two emails were sent to the housing provider regarding the unit advertised online. The only difference between the emails was whether the couple was same-sex or heterosexual. Unfavorable treatment was measured by whether the tester was told the unit was available, asked to contact the landlord, invited to see the apartment, or received any response at all.

Key findings of the study showed that:

- ◆ Same-sex couples experience discrimination in the online rental housing market, relative to heterosexual couples.
- ◆ Adverse treatment is found primarily in the form of same-sex couples receiving fewer responses to the email inquiry than heterosexual couples.
- ◆ States with legislative protections show slightly more adverse treatment for gays and lesbians than in states without protections.
- ◆ Adverse treatment of same-sex couples is present in every metropolitan area where tests were conducted, but no clear-cut pattern exists in the magnitude of adverse treatment by metropolitan size.

[The Fair Housing Act](#) makes it illegal to discriminate in rental, sales and lending on the basis of race, color, national origin, religion, sex, disability and familial status, however it does not include sexual orientation or gender identity as protected classes. Nonetheless, 20 states and the District of Columbia, and more than 150 cities, towns and counties across the nation have laws that specifically prohibit discrimination against LGBT individuals.

Recently, HUD issued new guidance that treats discrimination based on gender nonconformity or sex stereotyping as sex discrimination under the Fair Housing Act, and instructs HUD staff to inform individuals filing complaints about state and local agencies that have LGBT-inclusive nondiscrimination laws. In addition, on February 3, 2012, HUD published a final rule, "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity", which requires HUD-funded and HUD-insured housing providers and FHA-approved lenders to provide equal access without regard to sexual orientation, gender identity, and marital status.

This study, which was done in collaboration with the University of Albany, State University of New York, serves as the initial step toward future research on same-sex housing discrimination. Recommendations for upcoming studies include in-person testing, examination of legislative protections at the local jurisdictional level (rather than only at the state level), and tests for discrimination against transgender people to further examine difference in treatment between same-sex and heterosexual couples in states without legislative protections.

## HUD Notice 2013-21: Implementation and Approval of Owner-adopted Admissions Preferences for Individuals or Families Experiencing Homelessness

This Notice provides guidance to HUD field offices, contract administrators, and property owners on the circumstances under which owners of assisted properties may adopt admissions preferences. It also clarifies 24 CFR §5.655(c)(1) - (c)(5) to allow for owners to adopt, with HUD approval, admissions preferences not specified there, in particular, preferences to house homeless families.

The Office of Multifamily Housing Programs (Multifamily Housing) had strictly interpreted 24 CFR §5.655 (c)(1) - (c)(5) Section 8 project-based assistance programs: Owner preferences in selection for a project or unit, to mean that owners were limited in adopting preferences in the selection of residents to those preferences specifically cited in the regulation. That interpretation did not allow for an owner to adopt a preference for homeless families, as owners could not adopt preferences outside of 5.655(c)(1) – (c)(5).

The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act) revised the definition of homeless for HUD's homeless assistance programs, and on December 5, 2011, HUD published its final rule implementing this definition. HUD will use this definition to track the number of homeless persons served in its programs starting in September 2013, after changes to the HUD form 50059 have been completed.

The definition of homeless under the HEARTH Act, however, does not prohibit an owner from establishing an alternative definition of homeless for the purpose of a waiting list preference based on local need. Owners may elect to adopt a more narrow definition specific to the homeless needs in their community or a broader version that would serve more of the population. Because of the specificity of this definition, owners must go to the HUD field office for approval. Owners are reminded that any preference must comply with civil rights requirements.

Multifamily Housing owners can significantly increase program access for individuals and families experiencing homelessness by establishing an owner-adopted preference in admissions policies.

Owners must consider the following when adopting an admissions preference:

- ◆ **Eligibility and Requirements.** Preferences affect only the order in which applicants are selected from the waiting list.
- ◆ **Tenant Selection Plan and Affirmative Fair Housing Marketing Plan.** All owner adopted preferences must be included in the Tenant Selection Plan (TSP) and, if required, the Affirmative Fair Housing Marketing Plan for the associated property including any referral policy in the preference, if applicable.
- ◆ **Using a Homelessness Definition.** Owners may create a preference for homeless families using the HUD definition of homelessness or a definition that better suits the property in question.

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## Owner-adopted Admissions Preferences for Individuals or Families Experiencing Homelessness.....continued

- ◆ **Limiting preferences to people referred by a partnering organization.** Owners may create a preference or limited preference specifically for individuals or families who are referred by a partnering homeless service organization or consortium of organizations.
- ◆ **Use of Alternating Selection.** Even if not partnering with a referral agency, owners may fill vacancies in the property by alternating their selections of non-homeless applicants on the waiting list with applicants who meet the criteria for the preference.
- ◆ **Identifying preference-qualified applicants currently on the project's waiting list.** When adopting a new preference, owners must notify all applicants on the current waiting list to determine if any are eligible under the preference (24 CFR §5.655(c)).
- ◆ **Verifying preference eligibility.** If an owner adopts a preference or limited preference for individuals or families experiencing homelessness, the owner may require the individual or family to provide documentation to prove that they qualify for the preference.
- ◆ **Property Designations.** If the owner has a property designation of elderly or disabled on all or some of HUD assisted units, this designation remains in effect despite the adoption of the new preference.
- ◆ **Ensuring Fair Housing compliance.** When adopting a preference or limited preference for people experiencing homelessness, an owner must ensure that the preference would not have the purpose or effect of excluding other eligible families from the program on the basis of race, color, national origin, religion, sex, disability, or familial status, or would create or perpetuate segregation.

Owners must receive HUD approval in order to adopt an admissions preference not specified under 24 CFR §5.655(c)(1) - (c)(5) by submitting a written request to their local HUD Field Office specifying the type of preference with a full description of the preference and how it will be implemented.

Owners must still adhere to HUD screening guidance when it comes to screening for drug, criminal and those who are subject to state lifetime sex offender registration when it comes to applying this allowed preference.

A last note to remember, an owner cannot establish separate admissions/termination policies for a certain population, such as the homeless population, which are different from the admissions/termination policies than for all other applicants.

Complete details on establishing and implementing this homeless preference can be found by reviewing the notice in its entirety by clicking here: [HUD Notice 2013-21](#)



## HUD Publishes FY2014 OCAF Factors

The FY 2014 Operating Cost Adjustment Factors (OCAF) were published in the September 16, 2013 Federal Register. These factors are used for establishing or adjusting Section 8 rents (under MAHRA) for projects assisted with Section 8 Housing Assistance Payments.

The notice in its entirety including the new factors effective February 11, 2014, can be found here: [FY2014 OCAF Factors](#).

## Violence Against Women Act of 2013: More Protection for Victims

A recent notice issued related to the [Violence Against Women Reauthorization Act of 2013](#) (VAWA) expands the number of HUD programs subject to the statute's protections beyond HUD's public housing and section 8 tenant-based and project-based programs and seeks comment from HUD program participants and other interested members of the public by October 7, 2013.

VAWA 2013 provides that criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an affiliated individual of the tenant is the victim or threatened victim of the domestic violence, dating violence, sexual assault, or stalking.



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