

What HUD's Tenant Eligibility Notice Means for Section 8 Landlords

Prepare for increased enforcement.

By Lisa S. Lim, Esq.

HUD's newly issued notice on tenant eligibility verification has sparked concern among landlords and housing providers, with some viewing it as a significant policy shift tied to immigration enforcement.

However, the guidance does not create a new rule but rather reinforces long-standing requirements that are already embedded in HUD regulations pertaining to Section 8 housing and Section 9 public housing.

HUD-assisted housing has always been limited to eligible U.S. citizens or non-citizens with eligible immigration status, such as green card holders. The underlying eligibility rules have been in place for years.

While the Section 8 administrator (usually a public housing authority or "PHA") qualifies the Section 8 tenant for placement, the HAP contract—a three-way contract between HUD, the Section 8 landlord, and the tenant—requires that the owner must certify that the contract unit is leased to the tenant, who by definition must be an eligible U.S. citizen or non-citizen.

EIV Aids Enforcement

What's new here is enforcement. If landlords or public housing authorities have been lax in compliance, HUD now has the data and tools to identify it through the new EIV reporting process. The EIV is used as a third-party source to verify income and employment for HUD programs.

The EIV system has been expanded and is now capable of assisting PHAs with the verification of immigration status by generating an immigration report that monitors PHAs for tenant follow-up for:

- PHA and tenant compliance with Social Security number disclosure and reporting requirements;
- Implementation of prorated assistance of mixed families;
- Tenants pending verification of citizenship or immigration status as reported on Form HUD-50058; and
- Eligible citizens or non-citizens with an assigned alternate identification who need to disclose a Social Security number to the PHA.

PHAs are required to monitor the Immigration Report on a monthly basis and to update Form HUD-50058 with information provided by the tenant, the Social Security Administration, and the Department of Homeland Security or DHS.

The PHA is required to affirmatively continue following up with an individual whose citizenship or immigration status has not been positively confirmed, until the family has received appropriate documentation.

Risks of Noncompliance

If a tenant knowingly provides false, inaccurate, or incomplete information to a PHA, HUD considers that fraud. Consequences may include termination of rental

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assistance, eviction, and prohibition from receiving future HUD rental assistance for up to 10 years.

Landlords who are complicit in such fraud face potential risks, including the loss of subsidy payments, termination of Section 8 contracts, lender scrutiny, and reputational damage. In egregious cases, HUD may seek civil and criminal prosecution.

Stay Vigilant, Act Promptly

Landlords should stay vigilant regarding the occupancy of their units by making sure that only the approved and eligible tenant or tenant family is occupying the Section 8 unit.

Landlords should stay in close contact and communication with the PHAs that administer their Section 8 contracts. Should a landlord receive an Immigration Report or related notification from the

PHA regarding the ineligible status of a tenant, the landlord should communicate promptly with the PHA.

Lastly, if the PHA terminates the HAP contract due to ineligibility, the lease terminates. The landlord can bring an eviction proceeding under state or local law, after providing the requisite notice to the tenants.

Lisa S. Lim is a Member of Rosenberg & Estis' Transactions Department and New York Development Group. Her practice focuses on public-private collaborations with an emphasis on tax-exempt bonds, affordable housing, and regulatory frameworks. She has served as lead counsel on a number of 80/20 projects and prominent developments that have helped to revitalize and develop various parts of New York City.