2018 Annual Industry Seminar:
Fair Housing Follow-up

On December 6, 2018, Dr. Tom Romero presented a workshop titled: *So, You Want to Be An Inclusive Housing Professional? How to Liberate Yourself from Color-Blindness*

His workshop explored how and in what ways those charged with making affordable housing operational can incorporate an equity lens into their everyday work. Zeroing in on a few examples from various fields, Dr. Romero challenged us to consider a radical transformation in how we see, talk, and think about equality, diversity, affordability and justice in the clients and communities we serve.

A link to his PowerPoint Presentation can be found on the front page of AHC's website.

Did you know...

A recent blog article from *Costello Compliance* highlighted the fact that the tenant's portion of rent may exceed the Tax Credit maximum, if the tenant is receiving a Section 8 subsidy. Once the tenant no longer receives any subsidy, then their rent must not exceed the Tax Credit maximum. For your information, at properties with multiple funding sources, the HUD 4350.3 Section 5-30 (B) requires that owners identify the best option (lowest rent) for the tenant. The exception is at recertification with Section 8 and LIHTC: if the assisted rent exceeds the LIHTC maximum, the tenant may "make a choice between the lower tax credit rent and the security of continuing on the rental assistance program." In this situation, although owners may wish to prohibit tenants from terminating their subsidy in order to pay only the lower Tax Credit maximum, thus maximizing cash flow, it appears this is not allowable under HUD rules. Although the discovery of such a practice would not result in a finding for Tax Credit purposes, it might result in a finding by your Section 8 Contract Administrator.

Calculating Anticipated Income from Employment

Q.   Must a Management Company use the higher amount of anticipated annual income when comparing averaged income from pay stubs and Year to Date income?

A.   AHC and Minnesota Housing use the same standard for compliance monitoring. The HUD Handbook 4350.3, Chapter 5, as referenced in the Compliance Manual, is to be followed when calculating annual income, and we advise the use of the average of 4-6 recent and consecutive pay stubs to ensure Management has a reliable basis for estimating the consistency of income. YTD is a way to follow up with the household to document the reason for significant differences (e.g., a one-time past bonus, OT that is not expected to continue, etc.). YTD typically is more appropriate for households with sporadic or seasonal income or if a new job has recently started within 4-6 pay periods.

AHC follows guidance in the 8823 Guide to determine whether there is non-compliance.

HUD 4350.3

p. 5-3

Generally the owner must use current circumstances to anticipate income. The owner calculates projected annual income by annualizing current income.

p. 5-6

To annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.

Some circumstances present more than the usual challenges to estimating anticipated income. Examples of challenging situations include a family that has sporadic work or seasonal income or a tenant who is self-employed. In all instances, **owners are expected to make a reasonable judgment as to the most reliable approach to estimating** what the tenant will receive during the year. (emphasis added)

8823 Guide

p. 4-8

Maximum benefits and annualized payments **should not be used** unless the source of funds is expected to continue throughout the certification period or for an indeterminable length of time. (emphasis added)

p. 4-9

Owners are expected to make reasonable judgments regarding the most reliable method for estimating the income a household will receive during the year. (emphasis added)

NOTE: An owner must make a reasonable judgment. The **prior year's income should not be used** to estimate … future income if she can provide **sufficient documentation that her earning capabilities have changed**… (emphasis added)

p. 4-31

Household income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937. (Please refer to guidance in the HUD Handbook 4350.3)

p. 4-36

Treas. Reg. §1.42-5(b)(1)(vii) states that "[t]enant income is calculated in a manner consistent with the determination of annual income under Section 8 of the U.S. Housing Act of 1937."

Suballocator Compliance Manual

p. 6-15

To annualize income from other than full-time employment, multiply:

• Hourly wages by the number of hours the individual is expected to work per week by 52. If verification shows a **range of hours, use the average number of hours** (i.e., verification shows 30-35 hours per week, use 32.5 hours). (emphasis added)

Minnesota Housing's Compliance Guide includes the same language as above.

If Management follows the procedures identified above, AHC would not find a Tenant Income Certification in a tenant file noncompliant during compliance monitoring. Alternatively, AHC will flag as a Pattern of Sufficient but Imperfect documentation of income determinations if Management consistently uses YTD as a method to calculate annual anticipated income when another method would likely result in a more reliable annual income estimation. AHC would question whether use of a YTD method has resulted in denial for Sec. 42 housing when the same household might have been eligible using an annualization of current income (from pay stubs). Further, in a mixed-income property, use of a YTD method for income recertification might incorrectly result in triggering the Available Unit Rule.