

April 10, 2012

Sara Pratt
Deputy Assistant Secretary – Enforcement Programs
Office of Fair Housing and Equal Opportunity
HUD
451 Seventh St SW
Washington, DC 20410

Re: Need for HUD Guidance on Application Procedures in HUD Assisted Housing

Dear Sara:

I write to follow up on our brief conversation regarding public housing agencies and multifamily owners that utilize a “first-come, first-served” application procedure. Specifically, I once more urge HUD to issue clear guidance to housing administrators on how to develop application procedures that will provide equal access for all. As you know, I and my colleagues believe that the first-come, first-served selection approach used by many housing administrators creates an unlawful hurdle for potential applicants with disabilities who may not be able to quickly obtain and submit applications in hopes of securing an advantageous place on a waiting list. Such persons may be discouraged from applying, or placed lower on a waiting list because the first-come, first-served system essentially requires a competitive race to the top. For background, please see the August 26, 2010 letter to HUD officials from Michael Hanley, Phil Tegeler and me (attached here). Today’s letter is not meant to be a review of relevant law, but a reminder of the need for HUD action.

I also write to bring to your attention a problematic FHEO procedural issue that I recently became aware of.

1. HUD FHEO investigators do not allow a complainant to see the answer filed by a respondent. Before addressing the substance of the fair housing/application problem, I want to report a HUD administrative practice about which I recently learned.

A disability advocacy organization filed a fair housing complaint at the Boston HUD office claiming that a first-come, first-served application process used by a HUD-assisted multifamily development disadvantaged people with disabilities and violated various fair housing laws. After the complaint was filed, the respondent, a large management company operating scores of developments, filed a lengthy answer - approximately 75 pages. When the attorney for the disability organization asked to read the answer, he was told that he could neither see it nor be told of its contents. Somewhat stunned, he researched HUD’s investigation manuals and wrote to

the investigator citing relevant provisions.¹ Finally, the investigator agreed to summarize the response orally on the phone. The complainant's lawyer has never seen the answer and has thus carried on as best he could – but without a complete understanding of the defense, the details of the facts put forward by the respondent, the possibilities for settlement, etc.

Boston HUD staff informed me that this was the practice around the country; respondents could see the complaint but not vice-versa. If this is indeed the practice, I would hesitate to suggest that anyone file with HUD, since a complainant may well be disadvantaged if the actual content of the answer is unknown.

Thus, I write to ask if it is accepted HUD practice to deny the complainant the opportunity to read the respondent's answer. If so, I request that the policy be re-examined and changed.

2. Request for HUD guidance on certain application and selection procedures. As you know, some agencies and developments announce the opening and/or reopening of waiting lists in various media. Many of these announcements require applications to be picked up at the office on certain dates and provide no more information than that. Other announcements give more detail and inform possible applicants that selection will be based on the date and time that the application was picked up or dropped off (explicitly “first-come, first-served”).

In either case, inherent in this approach is the likelihood that people with disabilities and others who don't live in close proximity to the development won't be able to compete on an equal basis with able-bodied applicants or those who live close by. For this reason, in March of 1998 following a successfully-settled fair housing complaint on this issue brought by MLRI, the Boston office of HUD wrote to local housing authorities describing the risks of first-come, first-served application procedures and advising PHAs that a random selection system would in most cases work to avoid disadvantaging people with disabilities. A copy of that 1998 notice is attached and I note here a portion of the notice which neatly makes the case against the first-come, first-served system:

Any use of chronology in the course of re-opening a waiting list includes a risk that some persons with disabilities will not have equal access to the certificates or vouchers. Any PHA using chronology to order applications must, therefore, be prepared to make necessary modifications in its process to mitigate this adverse effect. For example, a PHA may need to mail applications to people with disabilities well in advance of a "first-come, first-served" opening or provide some other means for assuring that a person's place on the waiting list is not adversely affected because of a disability. If a PHA requires applicants to obtain applications in person, it must make reasonable modifications of this requirement for applicants who cannot obtain applications in person because of a disability. The notice itself should clearly state this fact and should also state

¹ The HUD Title VIII Complaint Intake, Investigation and Conciliation Handbook 9024.01 Rev - 2 does not appear to directly address this question although it minimally requires a "point-by-point" discussion of the Answer as soon as it has been made available. I don't believe there is anything in the Handbook that prohibits a complainant from actually reading the complaint – and certainly not upon request.

that the PHA will allow sufficient time for persons to make such requests for accommodation by phone or mail,

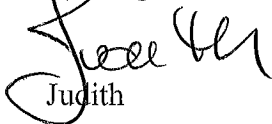
Use of a lottery or other random-choice technique precludes the necessity for special procedures to mitigate the adverse impact which may result from chronological processing. We recommend that you seriously consider random-choice methods for this reason. While it is within a PHA's authority to utilize chronological processing rather than random ordering when re-opening a waiting list, a PHA is fully responsible for assuring that such a method does not have an adverse impact on persons with disabilities. Maintaining such an assurance may require the use of administrative steps which are costly and time consuming for PHA staff. However, the Department will not view these costs as an "undue burden" under Section 504.

Thus, our local HUD office recognized that these selection practices are likely to harm people with disabilities. Given the risks of discrimination described in this notice, it is clear that the first-come, first-served selection approach utterly fails to affirmatively further fair housing, has a discriminatory effect on people with disabilities, and comprises discriminatory advertising. Further, it is unlikely that any attempt to offer reasonable accommodations would be effective.

Although this 1998 notice does a good job of warning PHAs in Region I about the need for a random selection approach, to my knowledge there is no comparable guidance from HUD headquarters to PHAs or other housing administrators. Issuing the necessary guidance would create a more level playing field for all applicants and would also demonstrate HUD's commitment to further fair housing by addressing a practice that has a high probability of adversely impacting people with disabilities.

Thank you for considering this important issue and please feel free to contact me with your questions or thoughts.

Best regards,



Judith

Encl: 1) MLRI letter to HUD, August 26, 2010
2) HUD Region I notice to PHAs

Massachusetts Law Reform Institute

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PHONE 617-357-0700 ■ FAX 617-357-0777 ■ www.mlri.org

August 26, 2010

Shaun Donovan, Secretary
Sandra Henriquez, Assistant Secretary, Office of Public and Indian Housing
Barbara Sard, Senior Advisor for Rental Assistance
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, DC 20410

Sent by email and regular mail

Re: Applying for HUD-Assisted Housing: Proposals for Change

Dear Secretary Donovan, Assistant Secretary Henriquez, and Ms. Sard:

We write to you as legal services and civil rights lawyers and members of the Housing Justice Network (HJN), an organization of legal services housing advocates from around the country.² For many years the Massachusetts Law Reform Institute (MLRI) and our colleagues in other states have worked to make the process of applying for HUD-assisted housing fair, non-discriminatory, and more user-friendly for families and individuals. MLRI has documented the inequities of local application systems, litigated, brought complaints at HUD, spoken at conferences and negotiated for improved application systems with PHAs. Although we have achieved some good success in Massachusetts, there is more to be done there, and even more work is needed in other areas of the country. We write now to request that HUD initiate a process to develop application procedures that are equitable, efficient, and non-discriminatory, and we hope to discuss these issues with you in the near future.

The Problem: Two Videos Worth a Thousand Words

Two videos vividly portray the awful consequences of using an in-person application process. Although the events depicted in these videos are separated by thirteen years, they are in most respects identical. The first, *End of the Line*, was made by MLRI in 1997 and documents the experience of people attempting to pick up Section 8 applications at the Fall River Housing Authority in southeastern Massachusetts. See <http://www.mlri.org/advocacy/housing>. The second is a report about a similar application process at the East Point (Georgia) Housing Authority on August 11, 2010. See www.msnbc.msn.com/id/21134540/vp/38667261#38667261.

² This letter is not a formal submission from HJN. However, we believe that because these observations and proposals mirror those in HJN comments to HUD's PETRA proposal submitted on May 3 and July 30, 2010, it fairly represents the concerns of our HJN colleagues.

End of the Line shows more than a thousand people who came to the housing authority in response to public notices and waited, some overnight, to get an application for the Section 8 voucher program—just an application, not a voucher. The scenes are heartbreaking—elders, people with disabilities, and children camping out in the cold with the slim hope of maybe, just maybe, having a chance for affordable housing.

Flash forward to Georgia on August 11, 2010. Thirty thousand people, many camping out for days, came to get applications for the Housing Choice Voucher and public housing programs. Again, they endured this process just for applications. The video shows scenes of chaos as thousands of people struggle to reach for applications handed out by overwhelmed staff.

What Have We Learned?

Does the similarity between the two videos mean that we have learned nothing in the past thirteen years? The answer is no—we have learned a lot—but the lessons have yet to reach many PHAs around the country. With HUD taking the lead, change is possible and what happened in Georgia need never be repeated.

In Massachusetts, advocacy made the difference. MLRI used *End of the Line* as evidence in a disability discrimination complaint filed with HUD. As a result, the Fall River Housing Authority changed to a lottery system that was fairer and accessible for applicants. Following up, in 1998 the Boston HUD office issued guidance to all PHAs in the New England region administering voucher programs. The notice suggested that, in order to avoid unlawfully disadvantaging people with disabilities, PHAs should consider using random application procedures.

Within a few years, almost every PHA administering the HCV program in Massachusetts adopted a lottery system. Subsequently, the Massachusetts Department of Housing and Community Development (DHCD) switched to a centralized one-stop lottery application and approximately 80 local housing agencies followed suit. For the HCV program, there are no more “cattle calls” (as one woman in *End of the Line* called the application experience) in Massachusetts and we are told that many housing agencies around the country have also developed similar systems that have worked out well. The experience in Massachusetts and elsewhere demonstrates that this is a solvable problem.

Proposal

HJN reviewed this issue in its comments to HUD’s PETRA proposal on May 3 and July 30, 2010, and suggested that HUD require an effective one-stop application process and centralized waiting list for all assisted housing in a region. HUD can and should help to implement a simpler, fairer, and non-discriminatory application process that will be less costly and easier for HUD to monitor. Recommended features of a more open one-stop regional application system include:

- A single initial preliminary application form for all federal rental assistance in a region regardless of the location of the housing, type of assistance (tenant-based or project-based), or identity of owner/manager;

- Applications should be widely available in a variety of methods (electronically, by phone, in-person, by fax, by mail);
- Applicants should be required to submit only one set of supporting documents, verifications, references, and other documents for HUD housing in a region;
- Required in-person application and first-come, first-served systems should be prohibited.

At a minimum, applicants would fill out only one pre-application form for programs administered by several PHAs (and/or multifamily developments) and submit it through one on-line portal, or through any application office.

To make a one-stop system easy for PHAs and multifamily owners to use, HUD would develop the necessary software and institutional support, modeled on similar systems already being used in some regions of the country. A good example of a one-stop application process and centralized waiting list is the one run by the Massachusetts chapter of NAHRO for the HCV program. See http://www.massnahro.org/S8_Home.php.³ There, 80 participating PHAs accept applications for the “Section 8 Housing Choice Voucher Centralized Waiting List” at all PHA locations. Applications can be printed directly from the website and applicants need apply at only one of the participating housing authorities, as opposed to 80, to have their names put on numerous waiting lists. The centralized waiting list is then sorted differently by each of the individual PHAs according to their preferences or by date of application. Applicants can check their status and update their application by submitting a form to any one of the participating PHAs.⁴

In contrast with the Massachusetts model (which applies only to the HCV program and is used by about half of the PHAs administering the HCV program), applying for federal rental housing resources is a daunting task in most parts of the country. Families hoping to maximize their chances of finding decent housing they can afford must apply to scores of programs and developments in the area. They must first figure out where the public housing, multifamily housing, and voucher agencies are located; which waiting lists are open; how long the wait might be; if appropriate-size units are available; what documentation and verification is required; and more. If they succeed in identifying the housing in the region in which they wish to live, typically families must then submit separate applications to the public housing programs, voucher programs, and multifamily developments.

³ Although we refer to the MassNAHRO process as a good example of an accessible *procedure*, serious *substantive* barriers to admission remain, which HUD must still address. Even with this more user-friendly process, the HCV programs themselves are not equally accessible to all applicants. This is largely because each PHA uses its own set of preferences and priorities. Most importantly, we believe that many, if not most, of the largely suburban PHAs on the list utilize local residency preferences which typically have the effect of excluding, discouraging, or delaying admission by applicants of color in violation of civil rights laws. As noted below, access to a central waiting list should make it much easier for HUD to monitor the operation of local preferences to ensure they comply with fair housing laws and other HUD regulations.

⁴ To our knowledge, there is no similar application system used either for multifamily or public housing programs, and we recognize that a somewhat different approach might be necessary for those programs as opposed to the HCV program.

Some of these programs demand in-person applications, while others have lists that have been closed for months or years. Some allow minimal initial applications to get on a list, while others demand complete and detailed applications with all supporting documentation. Most employ residency preferences some have employment preferences, and very few utilize needs-based preferences. Each program may demand separate verification of eligibility and preferences. There is a high likelihood that these physically grueling and complex procedures have a discriminatory effect on people with disabilities and other protected groups. Yet most of these PHAs certify that they have “affirmatively furthered” fair housing, and HUD accepts those certifications.

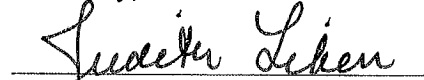
In short, finding and applying for federally assisted housing resources can be a needlessly confusing, time consuming, and frustrating job for the families who need the housing the most. The lack of equal information about available housing opportunities throughout a region and the hurdles people must surmount just to apply contribute to racial segregation and disadvantage those who are mobility-impaired or transit-dependent.

As difficult as this process is for families to navigate, it is equally difficult for HUD to monitor to ensure fairness and compliance with HUD regulations, affirmative marketing plans, and fair housing laws. As public housing may transition to PETRA and asset management, with separate site-based applications and waiting lists for individual developments, the cost and difficulty of monitoring will only grow exponentially. But with a single, central waiting list in each region, HUD could monitor admissions remotely, which would save time and money, further HUD’s goal of regionalizing the administration of public/subsidized housing, and enable HUD to better comply with its obligation to affirmatively further fair housing.

Recent events in Georgia illustrate the urgent need for HUD, housing providers, and advocates to come together to transform the application processes for subsidized housing. It is time to harness modern technology and common sense to make HUD’s programs accessible to those who need them. Fair housing and legal services advocates stand ready to assist in this endeavor.

Thank you for considering these comments. We hope to discuss the prospects for real change in the near future.

Sincerely,

A handwritten signature in cursive script that reads "Judith Liben". The signature is written in black ink and is positioned above a horizontal line.

Judith Liben
Senior Housing Attorney, MLRI
jliben@mlri.org

Michael L. Hanley
Empire Justice Center
Rochester, NY

Philip Tegeler
Poverty & Race Research Action Council
Washington, DC

cc: Diane Yentel, Senior Housing Program Specialist, Management and Occupancy Division,
Office of Public Housing Programs, HUD



U.S. Department of Housing and Urban Development

O'Neill Federal Building
10 Causeway Street
Boston, Massachusetts 02222-1092

New England

March 2, 1998

TO: PHAs administering Section 8 Programs

SUBJECT: Management of Section 8 Waiting Lists

HUD's Office of Fair Housing and Equal Opportunity and Office of Public Housing for New England are issuing this guidance to assist PHAs which administer Section 8 Existing programs. Most of the matters addressed here concern those PHAs which open their Section 8 waiting list only periodically (rather than keeping the list open continuously). A few of the items pertain to all PHAs administering a Section 8 program.

The decision to open a Section 8 waiting list only periodically is fully within the authority of PHAs. However, periodic openings can be confusing for PHA clients and, in certain circumstances, can have effects which are illegally discriminatory. One objective of this guidance is to assure that PHAs are fully aware of the particular obligations that come with administering such periodic openings, as well as particular options that are available in processing applications received during a periodic opening.

Notice of Waiting List Openings

When a PHA opens a waiting list, it must give notice by publication in a local newspaper of general circulation and by distribution through minority media. [24 CFR 982.206] HUD regulations under Section 504 also require that PHAs use forms of outreach which will reach persons with disabilities. [24 C.F.R. 8.28 (a)(1)] In order to ensure suitable outreach to a broad range of applicants, including people of color, families with children, and persons with disabilities, the housing authority should include among its targets, minority organizations, disability organizations and Independent Living Centers. PHAs should also consider issuing notifications of waiting list openings to local welfare offices, homeless shelters, domestic violence shelters, the Red Cross, CAP agencies, as well as Departments of Mental Health and Mental Retardation. For persons with sensory disabilities, housing authorities should consider using different outreach methods such as radio advertisements and closed caption advertisements on cable television.

Any public notice announcing the application procedure should be simple, direct and clear. It should contain sufficient detail to inform potential participants when the waiting list will be open

and what an interested person must do to get on the waiting list. The notice must include a statement informing potential applicants of the PHA's obligation to make reasonable accommodations in its policies and procedures for persons with disabilities.

HUD regulations prescribe that a PHA must use the following to select among applicants on the waiting list with the same preference (see 24 CFR 982.207):

1. Date and time of application, or
2. A drawing or other random-choice technique.

If the PHA uses the date of application as a factor in ranking applicants, any notice publicizing the opening of the waiting list should state this and explain what the critical action is that determines the date of application (i.e., whether applications are recorded by the date and time the application is picked up by the applicant, by the date and time a completed application is submitted to the PHA, or by some other action). If the "opening" will occur in one stage, the notice should specify the documentation necessary for an application to be accepted for placement on the waiting list.

Any use of chronology in the course of re-opening a waiting list includes a risk that some persons with disabilities will not have equal access to the certificates or vouchers. Any PHA using chronology to order applications must, therefore, be prepared to make necessary modifications in its process to mitigate this adverse effect. For example, a PHA may need to mail applications to people with disabilities well in advance of a "first-come, first-served" opening or provide some other means for assuring that a person's place on the waiting list is not adversely affected because of a disability. If a PHA requires applicants to obtain applications in person, it must make reasonable modifications of this requirement for applicants who cannot obtain applications in person because of a disability. The notice itself should clearly state this fact and should also state that the PHA will allow sufficient time for persons to make such requests for accommodation by phone or mail.

Use of a lottery or other random-choice technique precludes the necessity for special procedures to mitigate the adverse impact which may result from chronological processing. We recommend that you seriously consider random-choice methods for this reason. While it is within a PHA's authority to utilize chronological processing rather than random ordering when re-opening a waiting list, a PHA is fully responsible for assuring that such a method does not have an adverse impact on persons with disabilities. Maintaining such an assurance may require the use of administrative steps which are costly and time consuming for PHA staff. However, the Department will *not* view these costs as an "undue burden" under Section 504.

Applications

Recently, several housing authorities have distributed Section 8 applications which include questions not pertinent to Section 8 eligibility. Such inquiries may constitute invasions of privacy protected by federal and state privacy laws. Some PHAs are using the same application for the Low-Rent program and for the Section 8 certificate/voucher programs and thus inquiring about "tenant suitability", which is generally prohibited in evaluating Section 8 eligibility. [24 CFR

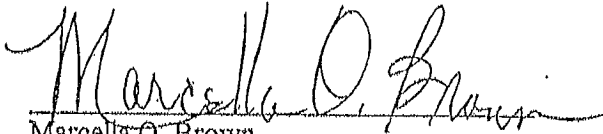
982.202] For example, some applications require applicants to answer questions about: any and all arrests or convictions, although only crimes involving drugs and violence are grounds for rejection of an application under Section 8; the identities and addresses of absent parents or ex-spouses; the names and addresses of persons the housing authority can contact as "general references."

Some PHAs report that requiring all documentation at initial application is inefficient and point out that some such information will be invalid by the time an applicant reaches the top of the list. Thus, a simple "pre-application" requiring minimal documentation may prove both more efficient and more expedient since it could be used for both a Low-Rent and Section 8 program. Complete documentation can be postponed until an applicant approaches the top of the list. In any event, PHAs should limit their requests for documentation from Section 8 applicants to what is required to verify program and preference eligibility under Section 8.

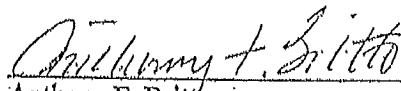
Conclusion

We encourage PHAs to seriously consider using random-choice methods as an alternative to chronological processing of a periodically opened waiting list. We believe that the former methods compare favorably in terms of administrative burden once a PHAs fair housing responsibilities are factored into the decision.

We welcome comments on these matters and hope to provide a forum for discussion of these and related matters in the upcoming months.



Marcella O. Brown
Director
Office of Fair Housing & Equal Opportunity
New England



Anthony F. Britto
Director
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