

Proposed changes (yellow highlights) to HUD Multifamily Occupancy Handbook 4350.3 to clarify general prohibition on “first-come” and in-person application requirements

Submitted by the Massachusetts Law Reform Institute, the Massachusetts Disability Law Center and the Poverty Race and Research Action Council

June 23, 2014

Chapter 4: Waiting List and Tenant Selection

Tenant Selection Plan

A. Key Requirements

Owners must develop and make public written tenant selection plans . . .

Figure 4-2: Written Tenant Selection Plan - Topics

A. Required Topics . . .

3. Procedures for accepting applications and selecting from the waiting list, including **lottery or other random selection procedures:**

6. Policies to comply with Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act and other relevant civil rights laws and statutes (see Chapter 2, Section 3). **These policies must specify application procedures that are equally accessible by all and do not have a discriminatory impact on the basis of race, disability, or other protected status.**

C. Required Contents of the Tenant Selection Plan . . .

3. Procedures for taking applications and selecting from the waiting list

a. Taking Applications. The plan must include policies for taking pre-applications (if applicable) and applications. . . .

D. Advertising. When a property is initially leased, or when available units cannot be filled from applicants on a waiting list, or no waiting list exists; the owner must advertise to attract eligible applicants in the market area who are least likely to apply. Advertising must be directed to all

potential applicants regardless of race, color, religion, sex, disability, familial status, or national origin.

1. An affirmative marketing program must be in effect for each multifamily project throughout the life of the mortgage. Such a program typically involves publicizing the availability of housing opportunities to all persons, regardless of race, color, religion, sex, disability, familial status, or national origin, in the media most likely to be used by the applicants, including minority publications or other minority outlets that are available in the housing market area.

2. Owners must target advertising to groups other than the typical population of the neighborhood in which the property is located, reaching out to applicants who are least likely to apply because they are not the predominant racial or ethnic group in the neighborhood.

Advertising should attract residents from outside the community by extending to the metropolitan or non-metropolitan regional area.

Advertising and marketing materials should indicate resident selection by lottery or other random selection procedure, where applicable.

Advertising should offer reasonable accommodations in the application process. . . .

Advertising and outreach efforts shall identify locations where the application can be obtained.

Applications should be available at public, wheelchair accessible locations, including one that has some night hours; usually, a public library will meet this need. Applications must be made available upon request to any agency or individual providing support or services to potential applicants. The advertisements and other marketing materials should include a telephone number that persons can call to request an application to be sent by mail, fax or email. Advertisements and other marketing materials cannot indicate that applicants must appear in person in order to receive or submit applications or that they will be have an advantage over applicants who do not appear in person.

4-16 Creating and Maintaining Waiting Lists

Key Requirements

A. Lotteries and Application Process

1. Lottery Application

a. "First Come, First Served"

Resident selection procedures must comply with applicable civil rights laws. A "first-come, first-served" (also known as chronological or date and time) procedure generally is not permissible as it is likely to disadvantage non-local applicants or may otherwise present an

impediment to equal housing opportunity for some applicants, including some applicants with disabilities.

Resident selection shall be based on a lottery. In very limited circumstances HUD may approve an alternative fair and equitable procedure after a good-cause showing that a lottery or other random selection procedure would be unduly burdensome or impracticable, and where no less discriminatory alternative is available. For example, if only one unit is being marketed and there is very low demand for such a unit in the area, a procedure other than a lottery may be appropriate.

In the limited circumstances where approval for an alternative procedure is requested, the owner must demonstrate to HUD how the alternative procedure will have no adverse effects on people with disabilities and others who cannot apply or pick up applications in person.

b. Application Period.

The application period should be at least 60 days. To ensure the fairness of the application process, applicants must not be required to deliver application materials in person and instead must be permitted to mail them or submit by alternative means such as fax or e-mail. . . .

Re-Opening Waiting Lists: Re-Marketing or Continuous Marketing

Although standards for re-opening waiting lists or re-marketing to generate sufficient applications after the initial rent-up stage may vary, the following are generally applicable: the waiting list is re-opened when it contains less than the number of applicants anticipated to be placed in the next 12 months, or, if the waiting list has not closed, additional marketing is needed to generate at least enough applicants as was needed to fill the previous year's vacancies.

a. Minimum Application Period

At such or similar points in time, consistent with the owner's policies and practices with respect to marketing and wait lists, when a wait list (whether for a project or a particular unit type) is re-opened or units are remarketed, a minimum application period during which applicants may receive and submit applications is required. The appropriate length of the application period may vary depending on the number of units that are or will become available. In some instances 20 or more business days will be appropriate, but in no event shall the application period be less than 10 business days during which applications may be requested during normal office hours.

b. "First Come, First Served"

A "first-come, first-serve" method of generating the waiting list order of new applicants that apply during said application period shall in most cases not be permitted as it may present an impediment to equal housing opportunity for some applicants, including some applicants with disabilities. Therefore, a random selection or other fair and equitable procedure for purposes of

adding persons to a wait list upon opening the wait list or remarketing the units must be utilized, subject to the approval of HUD. This does not require any changes to the wait list as it exists prior to adding the new applicants.

c. Continuous Marketing/Persons with Disabilities

If the wait list is not closed and marketing is ongoing to generate sufficient applicants, the owner must avoid a disparate impact on persons with disabilities who require a reasonable accommodation with the application process. Such reasonable accommodations include, for example, additional time to receive, complete and/or submit an application for those who may be disadvantaged by wait list placement based upon the date/time of receipt of the application. The application will be date/time stamped prior to being mailed or otherwise provided to such applicants and upon submission of a complete application, the household shall be placed on the wait list based upon such date/time stamp, provided that the application is returned or postmarked not more than 30 days of such date/time stamp. The ongoing affirmative and general marketing/outreach materials will contain language that explicitly gives notice of the availability of reasonable accommodations with respect to the application process and a telephone number for applicants who may want to request a reasonable accommodation and/or assistance with the application process.