



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:

Multifamily Regional Center Directors
Multifamily Hub Directors
Multifamily Program Center Directors
Rural Housing Services (RHS) Directors

Contract Administrators
Multifamily Owners and Management Agents

NOTICE H 2014-16

Issued: November 28, 2014

Expires: This notice remains in effect until amended, revoked, or superseded.

Subject: Waiting List Administration

- I. **Purpose.** This notice provides guidance on the administration of waiting lists for Multifamily Housing properties, on the topics of opening the waiting list, placing applicants on the waiting list, and outreach. This notice does not mandate any new practices for Multifamily owners and agents, but rather provides additional options for owners in their waiting list administration to further ensure fair housing compliance. For additional details, owners should review federal regulations at 24 C.F.R Part 5, as well as HUD Handbook 4350.3 REV-1 *Occupancy Requirements of Subsidized Multifamily Housing Programs*.

- II. **Background.** Multifamily owners are responsible for establishing an application and selection process that treats applicants equitably and provides an effective method for determining program eligibility. While maintaining a waiting list for a property, an owner may close the waiting list for one or more unit sizes if the average wait is excessive (HUD Handbook 4350.3 4-16). When an owner agrees to accept applications again, a notice of this action must be announced in a publication likely to be read by potential applicants and in accordance with applicable affirmative fair housing marketing requirements or the HUD-approved Affirmative Fair Housing Marketing Plan. Owners must also accommodate persons with disabilities who cannot utilize the owner's preferred application process, by providing alternative methods of application in-take (e.g. accepting mailed or online applications). In response to community concerns that individuals with disabilities may still be at a disadvantage regarding waiting list placement, the Office of Multifamily Housing (in alignment with the Office of Public and Indian Housing (PIH)), is publishing additional options for owners to administer their waiting lists.

III. Applicability. This notice applies to the following programs:

- A. Project-based Section 8
 - 1. New Construction
 - 2. State Agency Financed
 - 3. Substantial Rehabilitation
 - 4. Section 202/8
 - 5. Rural Housing Services (RHS) Section 515/8
 - 6. Loan Management Set-Aside (LMSA)
 - 7. Property Disposition Set-Aside (PDSA)
- B. Section 101 Rent Supplement
- C. Section 202/162 Project Assistance Contract (PAC)
- D. Section 202 Project Rental Assistance Contract (PRAC)
- E. Section 202 Senior Preservation Rental Assistance Contracts (SPRAC)
- F. Section 811 PRAC
- G. Section 811 Project Rental Assistance Demonstration units under a Rental Assistance Contract (PRA)
- H. Section 236
- I. Section 236 Rental Assistance Payments (RAP)
- J. Section 221(d)(3) Below Market Interest Rate (BMIR)

IV. Effective Date. This notice is effective upon publication and remains in effect until amended, superseded, or rescinded.

- V. Opening the Waiting List.** As stated in HUD Handbook 4350.3 REV-1, paragraph 4-16.B.2, when an owner agrees to open his/her waiting list and begins to accept applications, the notice of this action must be announced in a publication likely to be read by potential applicants in the same manner (and if possible, in the same publications) as the notification that the waiting list was closed. The notifications should be extensive, and the rules for applying and the order in which applications will be processed should be stated. Advertisements should include where and when to apply. Advertising and outreach activities must be done in accordance with applicable fair housing marketing requirements or the HUD-approved Affirmative Fair Housing Marketing Plan.

The notification requirements must also comply with HUD fair housing requirements, such as adopting suitable means to assure that the notice reaches eligible individuals with disabilities and those with limited English proficiency.¹ Multifamily owners must ensure that notices of and communications during all meetings are provided in a manner that is effective for persons with hearing, vision, and other communications-related disabilities

¹ For additional details, please see 24 CFR § 8.6 and the Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published in the Federal Register on January 22, 2007 (72 FR 2732).

consistent with Section 504 of the Rehabilitation Act of 1973 (24 CFR 8.6), and, as applicable, the Americans with Disabilities Act. This includes ensuring that meeting sites are accessible and auxiliary aids and services are provided as needed, *e.g.*, materials in Braille, audio, and large type; sign language interpreters, computer-assisted real time transcription (CART) services, and assistive listening devices, *etc.*

Consistent with our PIH counterparts, and the guidance in PIH Notice 2012-34, Multifamily Housing cautions against opening the waiting list and accepting applications for limited periods, such as a single day, which may create disorderly and unsafe application intake processes. Opening waiting lists for longer periods and making applications available ahead of time will create safer and more effective application intake processes. Additionally, having multiple venues, both physical and online, to accept the application will help promote safety and accessibility for the application process.

- VI. Placing Applicants on the Waiting List.** In scenarios where Multifamily Housing owners elect to open a previously closed waiting list for a set period of time, owners may consider the use of a lottery or other random choice techniques to select which applicants will be placed and to determine the order these applicants will be placed on a waiting list. Owners should consider whether this is a reasonable approach in their jurisdictions. For example, this approach would be reasonable for properties located in areas where the volume of applications is high enough that placing each eligible applicant on the waiting list would result in an unrealistic waiting period for housing. It may also be appropriate in scenarios where individuals unable to apply in person at the onset of the opening would be at a distinct disadvantage in their placement on the waiting list. If a Multifamily Housing owner uses this approach, the owner must describe it in the tenant selection plan and any public notice of a waiting list opening must clearly state that this system will be used to place applicants on the waiting list. Further, applicants should be notified that, so long as the application is submitted within the stated timeframe, the timing of the application submission will have no effect on how soon they may be offered assistance. If the lottery or other random selection procedure is not used, reasonable accommodations must be made for individuals who are unable because of disabilities to submit early in the application process.

If a lottery or other random choice technique is used to place applicants on the waiting list and to determine the order in which to place applicants on the waiting list, the date and time the lottery is held should be the date recorded on the waiting list. Any preferences the applicant qualifies for must also be noted on the waiting list. Selecting tenants from the waiting list must be done in accordance with Chapter 4 of HUD Handbook 4350.3, REV-1 including paragraph 4-15.A which requires that, once unit size and preference order is determined, owners must select applications from the waiting list in chronological order to fill vacancies.

- VII. Advertising.** Owners must advertise according to the property's Affirmative Fair Housing Marketing Plan and target this advertising to groups other than the typical population of the neighborhood in which the property is located while reaching out to

applicants who are least likely to apply because they are not the predominant racial or ethnic group in the neighborhood. All advertising must include the HUD-approved Equal Housing Opportunity logo, slogan, or statement. Further, all advertising depicting persons must depict members of all eligible protected classes including individuals from both majority and minority groups, including both sexes.

VIII. Paperwork Reduction Act

There are no information collection requirements in this Notice and therefore the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) does not apply. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

IX. Contact Information. Inquiries about this Notice may be directed to Kate Brennan at Catherine.M.Brennan@hud.gov in the Office of Multifamily Housing.

Biniam Gebre, Acting Assistant Secretary for Housing –
Federal Housing Commissioner