



OPERATION ALLIES WELCOME

Frequently Asked Questions (FAQs) on Fair Housing Issues Regarding Exceptions to Credit Check Policies and Occupancy Limits, Affirmative Marketing, and Language Access

Under a historic effort known as [Operation Allies Welcome \(OAW\)](#), the U.S. federal government is assisting Afghan arrivals with resettlement support services as they begin to rebuild their lives in the United States. These FAQs are intended to answer questions that landlords and property managers may have about the Fair Housing Act and other civil rights requirements as they consider participation in OAW.

The Fair Housing Act (“Act”) (42 U.S.C. §§ 3601-19) prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status, and disability. Discrimination includes a failure to make a change, exception, or adjustment to a policy, practice, procedure, or service when such accommodation may be necessary for an individual with a disability to enjoy and use housing.¹

In addition to the requirements under the Act, there may be additional requirements for recipients of federal financial assistance from HUD under other federal civil rights authorities. HUD’s Office of Public and Indian Housing has also published [Questions and Answers Regarding Housing Assistance for Refugees and Parolees](#), specifically for Public Housing Authorities.

Credit Check Policy Exceptions

Q: If a landlord or property manager requires credit checks at admission, may the landlord or property manager forgo credit checks for Afghan refugees or parolees?

A: Yes. Landlords and property managers may generally forgo credit checks for any potential residents as long as they do not discriminate because of a protected characteristic under the Fair Housing Act, which prohibits discrimination in housing-related transactions on the basis of race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status, and disability.² For example, if a

¹ Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and the Americans with Disabilities Act may also apply to requests for reasonable accommodations from residents of public or assisted housing.

² One exception to this general rule is in the public housing context. Depending on the circumstances, public housing authorities may not have complete discretion in forgoing a general policy of performing credit checks.

credit check exception is made because of immigration status, the exception must apply equally to all those in the immigration status and not only to those of a certain national origin.

It is a best practice for landlords and property managers to review their credit check policies (and other background check policies) to ensure that they do not discriminate unlawfully because of any protected characteristics. It is also a best practice to use alternate forms of verification of ability to pay for any prospective tenant without traditional credit, whether refugee, parolee, or otherwise. For example, if a refugee agency will provide full rent payments for the refugee family, other verification of ability to pay would appear unnecessary since the purpose of the credit check would be to provide a reasonable basis for believing that a tenant's rent will be paid.

For more information on credit requirement exemptions in public housing and Housing Choice Vouchers, please see HUD's Office of Public and Indian Housing's [Questions and Answers Regarding Housing Assistance for Refugees and Parolees](#).

Occupancy Limit Exceptions

Q: Are there any general rules for determining when occupancy standards and occupancy limits may be discriminatory? May landlords and property managers make exceptions to their existing occupancy limits (thereby allowing larger refugee or parolee families, or connected kinship groups) to reside together?

A: Unreasonable occupancy limits on the number of persons who may occupy a unit may violate the Act's prohibition on discrimination against families with children. HUD [guidance](#) advises that as a general rule, an occupancy policy of two persons per bedroom is reasonable under the Act, but that the reasonableness of such a policy may depend on specific facts and circumstances, including the size and configuration of the unit and sleeping areas.³ The [guidance](#) describes the factors that are used to determine whether a housing provider's occupancy limits may discriminate because of familial status.

Note that HUD does not prescribe specific occupancy standards for public housing. For Housing Choice Vouchers, Public Housing Authorities (PHAs) must ensure that the rented unit meets Housing Quality Standards space requirements listed at 24 CFR 982.401(d)(2). PHAs can also set public housing and Housing Choice Voucher occupancy limits locally in their Admissions and Continued Occupancy Policies or

Housing providers may be required to make exceptions to credit check policies in certain circumstances, including to comply with the Violence Against Women Act ("VAWA"), 34 U.S.C. § 12491 (see [PIH 2017-08 \(HA\)](#) (May 19, 2017) and [H 2017-05](#) (June 30, 2017) or as a reasonable accommodation under the Act and Section 504 (42 U.S.C. § 3604(f)(3)(B), 29 U.S.C. § 794.

³ Office of the Assistant Secretary for Fair Housing and Equal Opportunity, Fair Housing Enforcement – Occupancy Standards Notice of Statement of Policy, Federal Register, Vol. 63, No. 243 (December 18, 1998), at https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.

Administrative Plans. However, when determining these policies, PHAs must comply with fair housing requirements and may need to comply with specific state or local laws regarding occupancy standards.

Subject to the Fair Housing Act, and State or local law, a landlord or property manager may make exceptions to its existing occupancy policies limiting the number of persons per bedroom or unit. Exceptions must be made for families or groups without regard to protected class under the Fair Housing Act, which prohibits discrimination in housing-related transactions on the basis of race, color, national origin, religion, sex (including gender identity or sexual orientation), and disability in addition to familial status. In addition, exceptions to occupancy policies may not be made in a manner that has an unjustified discriminatory effect on persons because of a protected characteristic.

Landlords and property managers should also refer to their state and local laws regarding occupancy standards. For more information on exceptions to occupancy limits in public housing and Housing Choice Vouchers, please see HUD's Office of Public and Indian Housing's [Questions and Answers Regarding Housing Assistance for Refugees and Parolees](#).

Affirmative Marketing

Q: What may landlords and property managers do and not do to advertise to Afghan refugees or parolees?

A: Landlords and property managers should not publish or cause to be published an advertisement that expresses a preference, limitation or discrimination on the basis of any classes protected by the Fair Housing Act, i.e., race, color, religion, sex (including gender identity and sexual orientation), disability, familial status, or national origin.

Landlords and property managers may target marketing to populations least likely to apply for housing without special outreach efforts. In certain circumstances this could apply to Afghan populations. "Least likely to apply" has been defined in some contexts to mean that there is an identifiable presence of a specific demographic group (i.e., the protected characteristics listed above) in the housing market area, but members of that group are not likely to apply for housing in the absence of special outreach efforts. Special outreach efforts may include marketing materials in other languages for limited English proficient individuals, and alternative formats for persons with disabilities. The reasons for not applying may include, but are not limited to, insufficient information about housing opportunities, language barriers, or transportation impediments.

It is important to know that landlords and property managers should avoid targeting advertisements solely to Afghans or another group of persons because of a protected characteristic under the Fair Housing Act. In other words, advertising that includes marketing to the Afghan population should be part of a larger non-selective advertising campaign to persons with a range of protected characteristics.

It is perfectly legal to advertise housing in languages other than English. However, the content of advertisements should not be discriminatory, and languages should not be limited in a manner that discriminates because of a protected characteristic.

Advertisements should make clear that no one will get special preference – or be discriminated against – based on their national origin or other protected characteristic. Landlords and property managers should refer to HUD’s fair housing advertising [guidance](#) for more information.

Examples:

- Allowed: Landlord in an area with large communities of Afghan families speaking Dari and Pashto (languages widely used in Afghanistan), as well as Somali, Hmong, and Portuguese families advertises in all of the above languages as part of a larger non-selective advertising campaign.
- Not allowed: Landlord in an area with large communities of Afghan families speaking Dari and Pashto (languages widely used in Afghanistan), as well as Somali, Hmong, and Portuguese families, only advertises in Dari and Pashto.

Language Access

Q: Are there rules or best practices that landlords and property managers of non-HUD-subsidized properties should follow to ensure that people who are not fluent in English are being treated lawfully?

A: Regardless of whether a property is receiving federal financial assistance, landlords and property managers may not discriminate against people on the basis of national origin, and national origin can be closely related to the language that people speak. Therefore, for example, a landlord’s practice of requiring that tenants be able to speak English may constitute discrimination on the basis of national origin. For more information, please visit HUD’s [guidance](#) on Fair Housing Act protections for persons with limited English proficiency (LEP).

Best practices to avoid discriminating against LEP persons would include having rental documents translated, contracting with interpreters, hiring bilingual staff, and/or using a telephone interpreter line.

Q: Are there special rules that landlords and property managers of HUD-subsidized properties should follow to ensure that people who are not fluent in English are being treated lawfully?

A: In addition to the Fair Housing Act, landlords and property managers must follow certain rules for housing that receives federal financial assistance from HUD, as provided in the assistance contracts entered into by the property owners.

Title VI of the Civil Rights Act of 1964 requires recipients of federal financial assistance to take reasonable steps to ensure meaningful access to their programs and activities by limited English proficient (LEP) persons. Such services may include having rental documents translated, contracting with interpreters, hiring bilingual staff, and/or using a telephone interpreter line. Recipients cannot refuse to serve LEP persons, unduly delay housing services or translation services, or provide inadequate translation services. No matter how few LEP persons the HUD-subsidized unit is serving, oral interpretation services should be made available in some form. Please see HUD's [LEP Frequently Asked Questions](#) page for more information about HUD's Title VI LEP guidance. Additional resources may be found on [LEP.gov](#) and [HUD.gov](#). Landlords and property managers receiving federal financial assistance from agencies other than HUD should consult with those agencies for applicable LEP guidance.

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While this document provides general guidance on the Fair Housing Act and other civil rights requirements relevant to the questions and answers above, for any additional guidance landlords and property managers should consult their own counsel.