

Waiting List and Tenant Selection

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1 Chapter Overview

This chapter outlines the U.S. Department of Housing and Urban Development’s (HUD) waiting list and tenant selection requirements for the Public Housing (PH) program and provides guidance to Public Housing Agencies (PHAs) in establishing additional criteria for updating and maintaining a waiting list. Maintaining an up-to-date and well-managed waiting list promotes fair and consistent treatment of families, ensures that families receive assistance as quickly as possible, assists PHAs in complying with their fair housing and civil rights requirements, and is a first step in helping the PHA maintain high leasing and occupancy rates.

1.1 Purpose of the Waiting List

The waiting list establishes the order in which housing offers are made to qualified applicants. It is also the mechanism used to implement a PHA’s preference system. Setting up and maintaining the waiting list properly is essential to carrying out public housing admissions in accordance with HUD’s civil rights and program regulations and the PHA’s policies. Although the “waiting list” is referenced, there are multiple sub-lists based on unit sizes and types.

A well-organized waiting list is a source of data about need and demand for units by size, type and location. By analyzing trends of acceptance and refusal of unit offers, a PHA can tell which developments are considered most and least desirable by families with different characteristics. Waiting list data is also essential for several HUD applications such as demolition/disposition, voluntary conversion, Designated Housing and civil rights monitoring.

1.2 Tenant Selection and Assignment Plan Elements

The tenant selection and assignment plan (TSAP) incorporates written tenant selection policies and procedures developed by the PHA and is used to help ensure that tenants are selected for occupancy in accordance with HUD requirements and established PHA policies and preferences. The TSAP must be consistent with federal nondiscrimination and equal opportunity requirements.¹

Each PHA’s TSAP would need to address the following aspects of applicant selection and unit assignment:

- Whether the PHA will operate community-wide or site-based waiting lists or some combination of the two; Site-based waiting lists must be consistent with all applicable civil rights and fair housing laws and regulations, and a PHA must obtain approval from HUD in its PHA Plan process in order to use a site-based waiting list.²
- How the PHA determines which units to offer to an applicant when more than one unit of the right size and type is available for lease;
- The length of time an applicant is given to consider a unit offer;
- How many offers of housing an applicant may refuse without good cause before being dropped from the waiting list or dropped to the bottom of the waiting list;
- What is considered good cause for refusing a unit offer;

¹ 24 CFR § 5.105(a); 24 CFR part 1 (Title VI); 24 CFR part 8 (Section 504 of the Rehabilitation Act); 24 CFR part 100 (Fair Housing Act); 24 CFR part 146 (Age Discrimination Act); 28 CFR part 35 (Title II of the Americans with Disabilities Act).

² 24 CFR § 903.7(b)(2)(v)

- How applicants may be removed from the waiting list;
- The circumstances that allow resident transfers to take priority over offers to applicants;
- Ensuring that accessible units are occupied by individuals with disabilities who need the accessibility features of the units in accordance with HUD's Section 504 requirements;³ and
- Ensuring that reasonable accommodations are offered to individuals with disabilities throughout the TSAP process, including for example, when individuals are removed from or reinstated on the waiting list.⁴

PHAs must ensure effective communication with applicants, beneficiaries, and members of the public in all aspects of public housing program administration, including admissions and initial occupancy for individuals with disabilities.⁵ Similarly, PHAs must ensure meaningful program access for persons with Limited English Proficiency (LEP).⁶

Any admissions preferences adopted by the PHA must be consistent with the TSAP and comply with HUD's nondiscrimination and equal opportunity requirements.⁷ It is important that PHAs periodically review these policies to ensure that they are current and effectively support the PHAs' occupancy and leasing objectives.

2 Waiting List Administration

2.1 Opening the Waiting List

A PHA has flexibility to determine whether to keep the waiting list open indefinitely or whether to open the waiting list periodically for defined application periods to refresh the applicant pool, serve particular outreach and diversity objectives, market particular bedroom size units, developments, or neighborhoods, or meet other admissions objectives. PHAs are encouraged to make this determination only after careful analysis and consideration of all circumstances, including whether the length of the waiting list makes the wait for housing unreasonably long or whether there is a sufficient number of eligible applicants to ensure that new and turnover units are occupied as quickly as possible.

Any public notice announcing a waiting list opening and application procedure should be simple, direct, and clear but with sufficient detail to inform applicants of the date, time, method, and place applications can be obtained and submitted, how blank applications may be obtained (e.g. from what addresses, community sites, and websites), all methods by which applications will be accepted (e.g. in person, by phone, by fax, by email), a point of contact who can answer questions, any limitations on who may apply, and any other information the applicant may need to successfully submit the application. The notification process must also comply with HUD's fair housing requirements, such as adopting suitable means to ensure that the notice reaches eligible individuals with disabilities and those with limited English proficiency.⁸ PH program regulations require that

³ 24 CFR § 8.27 (Occupancy of accessible dwelling units)

⁴ 24 CFR part 8; 28 CFR part 35

⁵ 24 CFR § 8.6; 28 CFR part 35, Subpart E – Communications

⁶ 72 Fed. Reg. 2732 (January 22, 2007)

⁷ 24 CFR § 5.105(a); 24 CFR part 1 (Title VI); 24 CFR part 8 (Section 504 of the Rehabilitation Act); 24 CFR part 100 (Fair Housing Act); 24 CFR part 146 (Age Discrimination Act); 28 CFR part 35 (Title II of the Americans with Disabilities Act).

⁸ 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 on the Federal Register January 22, 2007 (72 FR 2732).

PHAs conduct affirmative outreach and marketing so that individuals of similar income levels in the housing market area have a like range of housing choices regardless of protected class.⁹ To ensure that public notices broadly reach potential applicants in all communities throughout the housing market area, PHAs are encouraged to distribute public notices to local community-based organizations, such as social service agencies and religious institutions; distribute the notice online through the PHA's website or social media platforms and other online platforms for local housing news; and make use of any local newspapers of general circulation, minority media, and other suitable means.

To ensure that the process for opening a waiting list does not violate fair housing and civil rights requirements, PHAs need to consider how best to provide a meaningful opportunity for a broad range of applicants from all communities in the housing market area to apply, including individuals with disabilities, families with children, and those of differing racial and ethnic groups. Requiring that applications be picked up or submitted in person, may make it difficult for individuals with certain disabilities, those with family care responsibilities, or those who live in a different neighborhood to apply. Holding the waiting list open during a narrow window of time can operate as a similar barrier. Therefore, PHAs are encouraged to distribute and accept applications at multiple locations throughout the area and online. PHAs need to consider how long to hold open the waitlist so as to ensure that all potential applicants have a meaningful opportunity to apply (.e.g. 30 days).

PHAs also need to be mindful of equity and civil rights obligations when reopening waiting lists. PHAs can use various strategies to avoid application intake procedures that may disproportionately exclude protected class applicants or other underserved groups or cause a safety concern for the public and PHA staff. Offering only one central location to submit applications under such circumstances is not adequate. In addition, requiring applications to be picked up and/or submitted in person can function as a barrier, unjustifiably excluding potential applicants who cannot travel to the property because they have a disability, do not live in the neighborhood, have inflexible work schedules or caretaking responsibilities, or other reasons. Distributing and/or accepting applications only during a narrow window of time, such as one day or a few hours over several days, can operate similarly.

Broader application distribution and acceptance requirements can reduce disparities; especially given the ease of digital communication. Examples include making applications available on a PHA's website, distributing applications to community contacts throughout the market area, and accepting applications through a variety of methods, including in-person, mail, and email. PHAs may consider allowing applications to be picked-up and dropped off outside of regular business hours, including evenings and weekends; ideally at multiple locations. Distributing and accepting applications for longer periods of time will also afford a wider range of potential residents the opportunity to apply. Finally, placing applicants on a waiting list pursuant to lottery rather than by prioritizing those who are first to apply is similarly likely to yield a more diverse tenant body, particularly when there is very high demand for the property.

Clearly explaining how applicants may submit their applications and how applicants will be selected for placement on the waiting list is also key to ensuring equal opportunity, including clearly explaining the process for obtaining a reasonable accommodation in the application process. Periodically assessing whether application processing requirements are perpetuating segregation or

⁹ 24 CFR § 964.30. See also 24 CFR § 200.610

unjustifiably restricting access to housing opportunity can help ensure ongoing compliance with fair housing and civil rights requirements. This is especially true as technological advances change how housing-seekers find and engage with housing opportunities.

2.2 Conducting Outreach to Families and Individuals

The PHA must inform individuals in their housing market area of the availability of housing through various means of outreach.¹⁰ Outreach is also an opportunity to educate the local community about the PHA’s programs. A PHA’s waiting list plays an important role in determining a PHA’s outreach needs: a waiting list that is not representative of the various demographics in the community in need of housing may be indicative of a need to adjust the PHA’s outreach efforts to effectively reach those groups. For example, if twenty percent of the eligible population in the community is made up of elderly families, but only five (5) percent of the waiting list consists of elderly families, the PHA may want to redirect additional outreach activities towards elderly families.

PHAs should also consider whether a waiting list opening will be targeted to a specific group, such as when a PHA is opening a waiting list for a HUD-approved Designated Housing project. In such cases, the PHA may conduct outreach only to the special population group. Please note that targeting of a specific group must be consistent with the PHA’s preferences, and site-specific waiting list requirements set out in its admissions and occupancy policies.¹¹ Before a specific group is targeted, the preference must be included in the PHA’s admissions and occupancy policies.¹² In cases where the PHA has been awarded funding by HUD for a specified category of families, the PHA does not have to establish a preference for the specified category. PHAs must ensure that any targeting is done consistent with fair housing and civil rights requirements. For example, ensuring that targeted outreach efforts extend into all neighborhoods within the housing market area can help promote compliance with these requirements.

PHAs operating programs that serve specific populations may also wish to conduct educational outreach to service-provision organizations, especially if the populations are hard-to-house populations. If a PHA partners with another organization to serve a specific population, the partnering organization can play a vital role in assisting the PHA in its outreach efforts, including any educational outreach.

To ensure a broad range of applicants, PHAs should consider issuing notifications of waiting list openings to local social service offices, homeless shelters, domestic violence shelters, and minority organizations, among others. PHAs should also think creatively when developing outreach efforts and consider using tools like social media sites, other websites, newsletters, and on-site visits. PHAs must advertise in other languages in accordance with the four factors described in HUD’s LEP Guidance.¹³

PHAs must also reach out to individuals with disabilities, including individuals with disabilities in institutions transitioning to community-based settings. When opening its PH waiting list, or in any other instance when the PHA engages in educational or other outreach about its programs, the PHA

¹⁰ § Notice PIH 2012-34

¹¹ 24 CFR § 903.7(b)(2)

¹² 24 CFR § 960.206(b)(1)(iii)

¹³ “Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” 72 FR 2732, 2740 (2007), available at: <https://www.hud.gov/sites/documents/FINALLEP2007.PDF>.

must ensure that the information, including information on the availability of accessible units, reaches the eligible individuals.¹⁴ PHAs may do this by targeting, for example, social service agencies, nursing homes, psychiatric hospitals, and other mental health facilities. PHAs may also contact state agencies that participate in the Money Follows the Person (MFP) program, Medicaid agencies, and other local partner agencies for a listing of institutions where the PHA can send outreach materials.

2.3 Placing Applicants on the Waiting List

PHAs may consider the use of a lottery or other random choice technique to select which applicants will be placed on the waiting list. In making this determination, PHAs should note that use of a lottery can help promote compliance with fair housing and civil rights requirements by ensuring that all applicants have an equal opportunity to be selected. A PHA must describe its prioritization system or whether it uses a lottery in its PHA 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.¹⁵

The PHA may use a site-based or agency-wide waiting list for admission to its PH program, consistent with all applicable civil rights and fair housing laws and regulations and public housing program requirements. A PHA operating in multiple jurisdictions may use a separate waiting list for each county or municipality, but PHAs should be mindful that in areas where counties and municipalities are largely segregated this practice can present fair housing and civil rights concerns. If the PHA maintains separate waiting lists for its programs, the following additional rules apply:

- If the Housing Choice Voucher (HCV) waiting list is open when an applicant is placed on the waiting list for the PHA's Public Housing, project-based voucher, or moderate rehabilitation programs, the PHA must offer to place the applicant on its HCV waiting list;¹⁶ or
- If the PHA's waiting list for its Public Housing, project-based voucher, or moderate rehabilitation programs is open when the applicant is placed on the HCV program waiting list, the PHA must offer to place the applicant on these other waiting lists as well, as long as the other programs include units suitable for the applicant.¹⁷

PHAs may also establish preferences and open the waiting list only to applicants who qualify for its preference(s). However, PHAs may not open the waiting list in this way if doing so would cause a residency preference to operate as a requirement, in other words, if housing cannot be obtained without residency. The PHA must base its preference system on local housing needs and priorities by using generally accepted data sources, such as a jurisdiction's Consolidated Plan, and preferences must be consistent with fair housing and civil rights laws.¹⁸ PHAs that use preferences to determine the order in which applicants will be placed on a waiting list must describe such preferences in their PHA plan, their admission and occupancy policies, and any public notice of the waiting list opening must clearly state the use of this procedure.

Site-Based Waiting Lists

PHAs inform HUD of their intent to use site-based waiting lists (SBWL) – for particular developments or throughout their entire public and assisted housing inventory – through their Annual Plan. Under

¹⁴ Notice PIH 2012-34

¹⁵ Notice PIH -2012-34

¹⁶ 24 CFR § 982.205(a)(2)(i)

¹⁷ 24 CFR § 982.205(a)(2)(ii)

¹⁸ 24 CFR § 960.206(a)(1); Notice PIH 2012-34

HUD’s regulations, the PHA’s Annual Plan must describe public housing resident or Housing Choice Voucher participant eligibility, screening, and selection policies and inform HUD of proposed changes.¹⁹

There are five conditions for the PHA to implement a site-based waiting list:

1. The PHA’s accurate, complete, and timely submission of tenant characteristic data to HUD;
2. The PHA’s full disclosure to each applicant of any option available concerning the selection of a development in which to reside – including basic information, such as location, occupancy, number of accessible units, amenities, transportation resources, and anticipated waiting time;
3. That the adoption of SBWLs would not violate any court order or settlement agreement, or be inconsistent with a pending HUD complaint;
4. Reasonable measures by the PHA to assure that adoption of SBWLs is consistent with affirmatively furthering fair housing, such as marketing; and
5. The PHA’s prepares for a review of the SBWL policy for consistency with civil rights laws and certifications by (a) reviewing changes in racial, ethnic or disability-related tenant characteristics, (b) use of independent testers every three years to ensure against non-discriminatory implementation of the SBWL policy, as well as a pattern and practice of discrimination, (c) taking any steps to remedy problems that surface during the review, and (d) taking steps necessary to affirmatively further fair housing.²⁰

HUD’s review of the PHA’s proposal to employ SBWLs includes compliance with civil rights related laws and certifications; consistency with remedial orders or agreements; consideration of allegations concerning civil rights related noncompliance; and PHA procedures to achieve consistency with affirmative fair housing marketing plans.²¹ HUD review and approval of a PHA’s proposed use of SBWLs is accomplished through the Annual Plan or Substantial Significant Amendment process. Also, the Annual Plan process entails a public review process prior to the PHA’s submission of Plan or Significant Amendment to HUD.

PHAs should be aware that adoption of a SBWL requires ongoing self-evaluation and notification to HUD of any proposed changes in the Annual Plan, as applicable. PHAs are also reminded, as part of the submission of the Annual Plan, to assess changes in racial, ethnic or disability-related tenant composition at each PHA site that may have occurred during the implementation of the site-based waiting list, based upon HUD’s Multifamily Tenant Characteristics Systems (MTCS) occupancy data. These requirements are explained at § 903.7(b)(2)(v)(A) and in the instructions to completion of the PHA Plan forms found at https://www.hud.gov/program_offices/public_indian_housing/pha.

2.4 Updating the Waiting List

Keeping an updated waiting list is important because it not only ensures that all applicants meet eligibility or tenant selection criteria, but it may also limit delays in leasing activities. Failure to keep the waiting list current may result in an increase of “no- shows” and ineligible determinations as information provided during the initial application process may become outdated or applicants may

¹⁹ The PHA Annual Plan “must describe the PHA’s policies that government resident or tenant eligibility, selection and admission. This statement must describe any PHA admission preferences, and any occupancy policies that pertain to public housing units and housing units assisted under [Housing Choice Vouchers], as well as any unit assignment policies for public housing. This statement must include the following information ... (2) Waiting List Procedures The statement must address any site-based waiting lists.” 24 CFR 903.7(b).

²⁰ 24 CFR 903.7(b)(2)

²¹ 24 CFR 903.7(b)(2)(iii)-(v)

no longer be interested in assistance. Factors that may require applicants to update their applications include: family moves, changes in income, changes in family composition, or changes in circumstances affecting an applicant's preference status.

The ACOP states the PHA's policy on when an applicant may be removed from the waiting list. Prior to removing an applicant from a waiting list, PHAs are encouraged to contact an unresponsive applicant through all means available, which may include via mail, phone, email, and text message. If possible, PHAs should use a variety of means to contact a family from the waitlist, and give that family a reasonable period of time to respond with their interest so as to not inadvertently remove an applicant who remains interested but may have moved, changed their contact information, or otherwise are difficult to reach. Please note that an informal review under the PHA's grievance policy is not required for such actions, but reinstatement may be required if the failure to respond was related to a family member's disability or was on the basis or as a direct result of status as a victim of domestic violence, dating violence, sexual assault, or stalking, including an adverse factor resulting from such abuse.

2.4.1 When to Update the Waiting List

PHAs may update waiting lists as they determine necessary. Determining when to update waiting lists may be based on factors such as:

- **The timeframe in which the PHA can provide assistance to applicants**
If a PHA is selecting applicants from its waiting list who applied for assistance within the last twelve (12) months, it is most likely not cost-effective to update the waiting list. PHAs that use the lottery approach for accepting applications, as described above may not need to update their waiting lists if they limit the number of names to be drawn to a number which they can expect to select within a reasonable period, i.e. 12 to 24 months.
- **The average number of families that need to be considered for a positive eligibility determination**
If the number of families that needs to be considered in order to identify an eligible family is becoming larger than is typical for the PHA, the PHA may want to consider updating its waiting list to remove families who are no longer interested in participating or who are no longer eligible to participate after confirming this information with the family.
- **The length of the PHA's waiting list**
PHAs with long waiting lists may find that it is not cost-effective to update the entire waiting list. Instead, these PHAs may decide to update only those applicants who are likely to reach the top of the waiting list within the next twelve (12) months.
- **The amount of staff and financial resources available to the PHA for this purpose**
Updating the waiting list can require significant staff time and resources, therefore, a good practice is to analyze the effort required to complete an update and plan the effort in a manner that balances updating the list and maintaining productivity in other areas.

2.4.2 Procedures for Updating

HUD regulations do not describe specific procedures for updating a waiting list. Some PHAs begin the process of updating their waiting list using various communication methods requiring waiting list applicants to verify their continued interest and complete a new preliminary application providing all information needed for placement on the waiting list. Some smaller agencies require applicant

families to contact the PHA to express continued interest in the program at regular intervals, such as every six (6) months. Procedures for updating the waiting list vary from PHA to PHA. Whatever policy a PHA adopts will be described in the PHA's ACOP, including what will happen if the applicant does not submit the required information by the deadline. PHAs will make these policies clear to all applicants when they apply so they know what will be expected of them to stay on the waiting list. Practices requiring a fixed mailing address can pose barriers for individuals experiencing housing insecurity or homelessness, who may be most in need of assistance. PHAs are encouraged to consider soliciting from applicants their preferred method(s) of communication, which may include mail, phone, text message, email, or contact through a representative or service provider.

PHAs may establish a policy of removing applicants who fail to respond to the PHA's request for information or updates. Generally, if no response is received by the deadline, the applicant is removed from the waiting list. Carefully documenting the removal may help to prevent disputes. For example, some PHAs attach the original letter to the file with a note indicating the date and reason for removing the applicant from the waiting list. If the letter is returned because the addressee could not be located, the returned letter is also filed. The PHA must reinstate an applicant family to its former position on the waiting list if the family was removed from the waiting list due to the family's failure to respond to the PHA's request for information or updates and that failure was related to a family member's disability or was on the basis or as a direct result of status as a victim of domestic violence, dating violence, sexual assault, or stalking, including an adverse factor resulting from such abuse.²²

2.5 Maintaining the Waiting List

HUD recommends that the waiting list contain sufficient information to allow the PHA to properly select families according to selection policies described in their ACOP, including the following information about each applicant:²³

- Applicant name;
- Family unit size, i.e., the number of bedrooms for which the family qualifies;
- Date and time of application;
- Qualifications for any local preference;
- Racial or ethnic designation of the head of household;²⁴
- Elderly families and families that include individual(s) with disabilities;
- Families who require mobility or hearing/vision accessible units, or other accessibility features; and
- Families with incomes below 30 % of Area Median Income (AMI).

Information concerning elderly families, families that include individuals with disabilities, and families with incomes below 30% of AMI need to be maintained as part of the waiting list data because PHAs are required to report that data in their PHA Annual Plan.²⁵ A PHA may need additional information for waiting list management tasks. In order to manage income targeting

²² See 24 CFR part 100, 24 CFR part 8; 28 CFR part 35; May 17, 2004 HUD/DOJ Joint Statement on Reasonable Accommodations; 24 CFR § 5.2005(b)(1)); Notice PIH 2017-08, 7.1 7.2 , 7.3 (providing examples of adverse factors that may be a direct result of VAWA abuse).

²³ 24 CFR § 982.204

²⁴ 24 CFR § 1.6(b) and 24 CFR § 121 require the collection of information about race and ethnicity. Applicants should be asked to self-identify. However, in the absence of self-identification information, other records (such as a prior application) or observation can be used to the extent practicable rather than failing to record the information.

²⁵ 24 CFR § 960.202(b) and § 903.7(a)

requirements, the PHA will need to know if the family appears to qualify as very low-income or extremely low-income.

PHAs may not take any of the following actions because an applicant has applied for, received, refused, or been refused other forms of Federal, state, or local housing assistance:

- Refusing to include the applicant on the PH program waiting list;
- Denying any preference for which the applicant is qualified;
- Changing the applicant’s place on the waiting list based on preference, date and time of application, or other factors affecting selection under the PHA selection policy; or
- Removing the applicant from the waiting list.

A PHA may merge its PH waiting list with its waiting list(s) for admission to another assisted housing program, including a federal or local program. For example, a PHA can merge its HCV waiting list with its project-based voucher program, moderate rehabilitation program and/or public housing waiting list. When admitting an applicant family, admission for each federal program is subject to the federal regulations for that program.²⁶

2.5.1 Maintaining Waiting List Documentation

HUD encourages PHAs to incorporate requirements to maintain applicant and participant family data confidentially in the PHA’s personnel policies. Failure to provide confidentiality to program applicants and families may have a negative impact on the PHA’s ability to obtain full and accurate family information.

The PHA may create a waiting list applicant file to hold applications and any related correspondence and supporting documentation. PHAs are encouraged to consider using a standardized format to document all electronic, telephone and personal contacts with the applicant, including date, nature of the contact, and action taken. This documentation is important because it gives the PHA a permanent written record of actions taken which may affect the application, for example:

- Change in preference status;
- Changes in family size and composition;
- Change of address;
- Withdrawal from the waiting list; and
- Determination of ineligibility.

As eligible applicants are selected from the waiting list, determined eligible, and leased under the program, the applicant file then forms the basis of the participant file.

2.5.2 Closing the Waitlist

PHAs are encouraged to consider closing the waiting list when they do not have sufficient available units to assist all applicants on the waiting list over a reasonable period of time. Although the PHA has the discretion to define what “a reasonable period of time” is, as a best practice, a reasonable waiting period is generally within twelve (12) to twenty-four (24) months. A PHA may also choose to close only a portion of its waiting list instead of the entire waiting list. For example, a PHA may

²⁶ 24 CFR § 982.205(a)(1)

continue to receive applications from families qualifying for a specific local preference category, e.g. homeless families, while closing its waiting list to all other groups.²⁷ However, a PHA cannot open its wait list only to those who qualify for a residency preference as doing so has the effect of turning the residency preference into a requirement. Lastly, any PHA closing or opening of its waiting list must comply with fair housing and civil rights requirements.²⁸

3 Accepting Applications

The PHA decides the method of accepting and processing applications. In making this decision, PHAs typically consider the following factors:

- Number of families expected to apply;
- Leasing rate and current and future availability of units;
- Size of the PH program;
- Number of applicants currently on the waiting list;
- Staff availability, workload, and other administrative constraints; and
- Applicable court orders, voluntary compliance agreements, or other mandatory directives.
- Barriers faced by potential applicants in the housing market area related to methods for application submission, e.g., ease of public transit to a site where applications are accepted.

PHAs will accept applications from all families wishing to apply when the waiting list is open. Even if it is apparent to staff that a particular family may be found ineligible, any family requesting an application when the list is open may be allowed to apply. If, in subsequent evaluations of the application, the household is found to be ineligible, the PHA must inform the family in writing of the reason for its ineligibility and of the family's right to request an informal review under the PHA's grievance policy.²⁹ PHA's may conduct remote hearings for informal reviews. If the PHA would like to implement remote hearings, the PHA must update its grievance procedure policy as described in 24 CFR 966.52 to include provisions to allow for the use of mail, electronic mail, telephone, and video call, as appropriate.³⁰

3.1 Common Application Acceptance Methods

The following list summarizes a variety of application acceptance methods commonly used by PHAs. HUD encourages PHAs to use multiple application acceptance methods in order to comply with their affirmative marketing and fair housing obligations. A PHA may be required to vary the means of application acceptance as a reasonable accommodation.

1. Online Applications

Accepting applications online may be a convenient acceptance method as applicants would be able to access applications from various electronic devices using the internet. In addition, it allows a PHA to gather applicant data automatically and populate the PHA's waiting list database. Generally, all required fields will need to be completed prior to application submission and acceptance. This will eliminate the need for additional notifications to be

²⁷ PIH Notice 2013-15

²⁸ 24 CFR 960.206(b)(1)(i)

²⁹ 24 CFR § 960.208(a)

³⁰ Notice PIH 2020-32

provided to the applicant regarding their initial application status (accepted or rejected as incomplete). Online applications must be accessible to individuals who are blind or visually impaired and must be translated into other languages in accordance with the four factors described in HUD's LEP Guidance.³¹ If a PHA accepts online applications, accepting applications by other means as a reasonable accommodation is also required.³² For example, PHAs may assist with the completion of applications during home visits upon request.

2. On-site Paper Applications

PHAs may consider accepting paper applications on-site during regular office hours either by appointment or on a walk-in basis. Accepting applications by appointment may eliminate long applicant lines and excessive waiting times, thereby promoting good customer service. Accepting applications by appointment may also be advisable in cases where staff are not available full-time to take applications or if there is an insufficient volume of applicants to warrant a full-time employee dedicated to this activity. If appointments are required, the PHA will ensure that enough appointment slots are available to accommodate everyone who wants to apply and add additional appointments if needed.

PHAs are encouraged to offer the option to schedule an appointment or drop off applications during early morning, evening, or weekend hours to accommodate applicants who may be unable to appear during regular business hours due to work obligations, inability to obtain child-care or transportation, or other hardship reasons. PHAs may also consider allowing applications to be dropped off at any time through a mail slot or collection box. In addition to accepting applications on-site, HUD encourages PHAs to designate alternative sites throughout the housing market area for applicants to pick up and submit applications for assistance (e.g., community centers, libraries, or service providers). PHAs may also establish one or more centralized application centers with shared staff from various PHAs.

A walk-in approach may work well if the PHA has enough staff to handle the demand and the demand is low enough to maintain an orderly office environment without requiring excessive wait times. Smaller PHAs may find taking paper applications on a walk-in basis particularly useful as there will generally only be a small number of applicants and they may be able to advise of missing/incomplete items at that time.

3. Applications by Mail, Email, Online, and Fax

Instead or in addition to allowing applicants to apply in person, PHAs are encouraged to have applicants obtain applications and return the completed forms via mail, email, online (e.g. the PHA's website), or fax. These methods reduce barriers for applicants who have difficulty traveling to the PHA office because of a disability, work, or family care responsibilities, or because the family lives in another neighborhood within the PHA's market area, or is living out-of-state and interested in relocating to the PHA's area. It is ideal if a pre-application form is used and can be printed from the internet or picked up from various locations throughout the housing market area, such as libraries (see *Section 4- Processing Applications and Application Content*, below).

³¹ "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 72 FR 2732, 2740 (2007), available at: <https://www.hud.gov/sites/documents/FINALLEP2007.PDF>.

³² 24 CFR § 100.204(a)

While accepting applications by mail, email, online, or fax will limit staff time spent servicing walk-in applicants and scheduling and conducting applicant interviews, some PHAs prefer not to have applicants complete the full application form off-site because of the risk that questions may be interpreted or answered incorrectly. If a full application is mailed, follow-up phone calls or correspondence are often required to obtain additional information and to ascertain the accuracy of all entries on the application form prior to verification. PHAs may choose to design application forms that can be recognized by a computer and will automatically enter applicant information into a computer database, eliminating data entry by staff.

4. Applications by Telephone

Through the installation of an interactive voice response system, PHAs may choose to accept applications by telephone. When applicants call in, the response system requests pertinent application information and confirms the information by repeating applicant responses in a synthesized human voice. The system virtually eliminates staff time associated with taking applications, except for special cases where the applicant needs to speak with a specialist. Staff may also need to follow up with applicants to clarify or confirm the accuracy of information provided. Another benefit is that the system can operate 24 hours a day. If such a system is not feasible, PHAs may still accept applications by telephone by assigning a staff person to take applicant information. If applications are taken in this way, the PHA will work to ensure that wait times are not unreasonable and no one is turned away because of an inability to get through. In addition, any system for accepting applications by telephone, whether through an automated system or by staff must be accessible for individuals with disabilities and provide meaningful access for individuals with Limited English Proficiency (LEP) (e.g. by providing a TTY or video relay service for individuals who are deaf, and using an interpreter phone service for LEP individuals).³³

4 Processing Applications and Application Content

HUD generally does not mandate the format or content for a public housing application or the method for processing applications, except that public housing applications must be provided in accessible formats to individuals with disabilities, and must be translated into other languages in accordance with the four factors described in HUD's LEP Guidance.³⁴ Families wishing to participate in the program will complete an application according to the method required by the PHA.

4.1 Use of Preliminary Application Form

Many PHAs opt to have applicants complete a streamlined, abbreviated pre-application form as the first step in the application process. The pre-application collects only the information that is required for placement of the family on the waiting list and may include the name and address, family unit size, date and time of application, qualifications for any local preference, racial or ethnic designation of the head of household, elderly status, disability status, whether the family requires a designated accessible mobility or vision/hearing unit or unit with accessibility features, and income. In addition,

³³ 24 CFR § 8.6; 28 CFR § 35.161; 72 Fed. Reg. 2732 (January 22, 2007)

³⁴ "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 72 FR 2732, 2740 (2007), available at: <https://www.hud.gov/sites/documents/FINALLEP2007.PDF>.

the pre-application may inquire about an estimate of annual income to comply with the PHA plan and income-targeting requirements. (See *Section 7 - Income Targeting Requirements, below.*)

4.2 Full Application Form

PHAs with no waiting list or a very short waiting list may opt to skip the pre-application and use only a full application form. While the pre-application is optional, all applicants will need to complete a full application. The full application may include the following:

- Information necessary to compute the family's annual income. This includes identification of all sources of income and how amounts are paid (annually, bi-annually, quarterly, monthly, bi-monthly, bi-weekly, weekly, etc.) and all assets and anticipated income from assets;
- Information necessary to determine allowances and adjusted income. This includes information related to the number of dependents, type of family (elderly or disabled), and any childcare expenses, medical expenses (elderly and disabled families only), or disability assistance expenses;
- Information to determine family composition and family unit size requirements;
- Information related to qualification and verification of preferences;
- Name and address of current and previous landlord;
- Identification of persons with disabilities and special housing needs, including whether the family requires a designated accessible mobility or vision/hearing unit, or unit with other accessibility features;
- Information on previous evictions from federally assisted housing;
- Information on convictions that would render the applicant ineligible for the housing and any relevant mitigating information;³⁵
- Information on sex offender registration requirements for any household member;
- Information on any other screening required by PHA policy;
- Statistical information for reporting/tracking purposes, such as race, ethnicity, household size, housing status (data on race, ethnicity, religion, sex, national origin, age, disability, and family characteristics is required by regulation to be collected); and
- A certification that the information provided is accurate and complete.

5 PHA Selection Preferences

The PHA may establish a system of local preferences for the selection of families admitted to the Public Housing program. PHA selection preferences will be described in the ACOP. Any system of local preferences must be consistent with the PHA's Annual Plan and the Consolidated Plan under which the local PHA jurisdiction is covered.³⁶ In addition, the preference system must be based on local housing needs and priorities, as determined by the PHA.³⁷ In determining such needs and

³⁵ Notice PIH 2015-19

³⁶ 24 CFR § 960.206(a)(1)

priorities, the PHA must use generally accepted data sources and consider public comment on the proposed PHA Annual Plan and the Consolidated Plan.³⁸

Preferences are only used to establish the order of applicants on the waiting list. They do not impact eligibility for applicants who are otherwise ineligible, nor do they change the right of a PHA to adopt and enforce tenant screening criteria. The PHA may not deny an eligible applicant family based on a failure to meet the requirements of a local preference. In addition, the PHA cannot provide a local preference for families who agree to participate in the family self-sufficiency program or adopt a preference for selection of higher income families over low-income families.³⁹

If a PHA wishes to change the current preference system in place, they are required at a minimum to update the ACOP and publicize and post copies of any newly adopted and implemented tenant selection policies.⁴⁰ Changes to the preference system must also conform to the Consolidated Plan for the PHA’s jurisdiction.⁴¹ The PHA may also be required to update the PHA Annual Plan based on whether or not the changes to the current preference system constitute a “significant amendment” to or “substantial deviation” from the PHA Plan. If the change to a PHA’s preference system is considered a significant amendment, the PHA is subject to requirements for consultation and period for public comment under the PHA Plan.⁴²

PHAs must explain each preference to applicants and provide them with the opportunity to claim a preference prior to application submission.⁴³ However, the PHA may limit the number of applicants that may qualify for any local preference.⁴⁴ For applicants on the waiting list with the same preference status, the PHA may select among applicants using the date and time of submission or using either a lottery or other random selection method.

5.1 Types of Preferences

Below are examples of various types of local preferences that a PHA may, but is not required to establish based on local housing needs and priorities. Prior to adopting any preferences, the PHA must include such preferences in an approved PHA Plan. The PHA also must inform all applicants about available preferences and give applicants an opportunity to show that they qualify for available preferences.⁴⁵

1. Residency Preference

Residency requirements are prohibited. However, a PHA can submit a residency preference to HUD for approval for applicants who are working in or have been notified that they are hired to work in the locality as well as to applicants currently living in the PHA’s jurisdiction.⁴⁶ Eligibility for this preference may not be based on the length of time the applicant has lived or worked in the area.⁴⁷ For example, a family that arrived in town yesterday qualifies as a resident if they do not live somewhere else. Graduates or participants of a program that

³⁹ 24 CFR § 960.206(a)(2); 24 CFR § 903.2(a)(2)

⁴⁰ 24 CFR § 960.202(c)(2)

⁴¹ 24 CFR § 960.206(a)(1)

⁴³ 24 CFR § 960.206(a)(4)

⁴⁴ 24 CFR § 960.206(a)(2)

⁴⁵ 24 CFR § 920.206(a)(1) and (4)

⁴⁶ 24 CFR § 960.206(b)(1)(v)

⁴⁷ 24 CFR § 960.206(b)(1)(iv)

offers training for the local job market may qualify for this preference. An equal preference must be given to anyone who lives or works in the preference area. In other words, a PHA may not award double points to an applicant who both lives and works in the preference area, nor award a higher number of points for those who live in a preference area versus those who work in the area or vice versa. A county or municipality may be used as a residency preference area, but only if doing so complies with fair housing and civil rights requirements.⁴⁸ An area smaller than a county or municipality may not be used as a residency preference area.⁴⁹ This means, for example, that a county PHA cannot adopt a residency preference that does not include the entirety of that county. In crafting a residency preference regardless of size, PHAs must ensure that the preference does not violate fair housing and civil rights requirements. PHAs may not impose a residency requirement for program eligibility.⁵⁰ If, in practice, it is nearly impossible to gain admission without the points from a residency preference, then the preference is operating as a requirement and may be impermissible under HUD regulations.

2. Working Family Preference

PHAs may adopt a preference for working families (families where the head, spouse, co-head or sole member is employed). PHAs that adopt this preference must also apply it to an applicant family if (1) both the head and spouse or co-head are either age 62 or older or a person with disabilities; (2) the sole member is age 62 or older or a person with disabilities;⁵¹ or (3) the head of household is a person with disabilities and resides with family members who are minors.

3. Veteran's Preference

PHAs may adopt a preference for veterans. Prior to establishing this preference, PHAs are encouraged to consider if this preference applies to veterans who were discharged from service under conditions other than dishonorable or if all veterans qualify.

4. Homeless Preference

PHAs may adopt a homeless preference and define what the term “homeless” means in their ACOP to ensure consistency. In addition, PHAs are encouraged to consider how many applicants are currently on the waiting list prior to adopting this preference as families that are homeless at the time of application may not be homeless by the time they are selected from the waiting list.

5. Preference for Categories of Single Persons Over Other Single Persons

PHAs may adopt a preference for admission of single persons who are elderly (age 62 or older), persons with disabilities, homeless, or displaced, over other single persons.⁵² This preference allows PHAs to select individuals qualifying under these special categories before selecting other single individuals. A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a resident family may not be provided a housing unit with two or more bedrooms.⁵³

⁴⁸ 24 CFR § 960.206(b)(1)(i)

⁴⁹ 24 CFR § 960.206(b)(1)(ii)

⁵⁰ 24 CFR § 960.206(b)(1)(i)

⁵¹ 24 CFR § 960.206(b)(2)

⁵² 24 CFR § 960.206(b)(5)

6. Preference for Individuals with Disabilities

PHAs may adopt a preference for families that include a person with disabilities. PHAs generally may not adopt a preference based on persons with specific disabilities or diagnosis.⁵⁴ In 1999, the U.S. Supreme Court issued a landmark decision in *Olmstead v. L.C.* affirming that the unjustified segregation of individuals with disabilities is a form of discrimination prohibited by Title II of the ADA. The *Olmstead* ruling means that states and localities cannot require persons with disabilities to reside in nursing homes, state psychiatric hospitals, or other institutional settings in order to receive necessary services if those services could reasonably be provided in integrated, community-based settings.

HUD encourages PHAs to work with state and local governments to provide integrated, affordable and accessible housing options for persons with disabilities who are transitioning from, or at serious risk of entering, institutions or other segregated settings. For example, a PHA could offer certain preferences that will enable persons with disabilities to transition from institutional settings more quickly or enable individuals at serious risk of institutionalization to reside in integrated, affordable housing in the community.

HUD also encourages PHAs to implement preferences that support *Olmstead* efforts. General preferences for persons with disabilities who are transitioning from or at serious risk of entering an institutional setting are permissible. Preferences that target individuals with specific disabilities or diagnoses may be authorized in connection with remedial actions undertaken pursuant to DOJ enforcement, *Olmstead*-related settlements or litigation, and state and local governments' voluntary, documented affirmative *Olmstead* planning and implementation efforts. Since targeted preferences for specific disabilities can only be authorized as remedial actions, such preferences must be reviewed and approved by HUD's Office of General Counsel, Office of Fair Housing. PHAs also must request a waiver of HUD's program regulations that prohibit disability-specific preferences.⁵⁵

Other examples of preferences may include:

- Families that include victims of domestic violence, dating violence, sexual assault or stalking;⁵⁶
- Families that are involuntarily displaced due to either government action or natural disaster;
- Families residing in substandard housing;⁵⁷
- Families that pay more than 50 percent of gross income towards rent and utilities; or
- Families that were terminated from the PHA's HCV program due to insufficient funding.

While the list above provides examples of preferences, The Quality Housing and Work Responsibility Act of 1998 encourages PHAs to consider establishing a local preference for families that include victims of domestic violence. PHAs are also encouraged to establish a preference for families that were terminated from the PHA's HCV program due to insufficient funding.

⁵⁴ 24 CFR § 960.206(b)(3)

⁵⁵ See 24 CFR § 5.110 and Notice PIH -2018-16, Regulatory Waivers, available at <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2018-16.pdf>.

⁵⁶ 24 CFR § 960.206(b)(4)

⁵⁷ Regulation found at 24 CFR § 5.703 describes housing that is decent, safe, sanitary, and in good repair.

5.2 Verification of Preferences

PHAs choosing to adopt preferences must also adopt policies for verifying these preferences.⁵⁸ PHAs are not required to verify applicant preferences at the time of pre-application, however as a best practice, PHAs may include a self-certification clause for applicants indicating that the family is in fact eligible for any preferences claimed. PHAs may place applicants on the waiting list based on any preferences claimed.

Applicants will be required to provide information requested by the PHA to verify any preference claimed upon selection from the waiting list. If the PHA determines that the family does not qualify for the preference claimed based on the verification provided, the family will not receive the preference, but may be returned to the waiting list in the position they originally would have qualified for without preference consideration.

When identifying local preferences, it is important to simplify the definitions to the greatest extent possible so that families claiming preferences clearly understand what they are claiming, and preferences can be easily verified.

It is important to note that preferences and screening criteria can discriminate in the mechanics of their application, as well as their overall design. For example, limitations on the type of proof accepted to establish residency may disadvantage applicants living in housing insecurity – e.g., requiring a lease or mail with the applicant’s name and current address may disadvantage applicants staying with friends or family, moving frequently, sleeping in shelters or their car, receiving mail at a P.O. box, etc. Similarly, a lack of clarity around when applicants must live in a jurisdiction to qualify for a residency preference may operate to exclude or deter applicants who may need to move one or more times over the course of time they are on a waitlist. Finally, a tenant selection policy is more likely to be justified if it affords applicants the opportunity to correct misinformation or present mitigating information.

5.3 Applying Preferences

After PHAs have adopted preferences and established verification methods, they must address how each preference will be applied in the PHA plan, to ensure fairness and consistency amongst all applicants.⁵⁹ PHAs have discretion to apply preferences through several methods, so long as the selected method complies with fair housing and civil rights requirements, including, but not limited to:

- **Lumping**
Lumping allows all applicants who qualify for any preference to be treated equally. Essentially, there are no priority preferences. Applicants are divided into two categories; applicants with a preference and applicants without a preference. All applicants with a verified preference would be selected for housing assistance before any applicant without a preference.
- **Aggregating**
Aggregating allows applicants with multiple preferences to receive assistance before applicants with fewer or no preferences. Essentially, the more preferences an applicant

⁵⁸ 24 CFR § 960.202(a)(2)(iv)

⁵⁹ 24 CFR § 903.7(a)

holds, the higher on the list the applicant will be placed. Applicants holding three preferences are higher on the list than applicants that hold two preferences and will therefore be selected to receive housing assistance first. Applicants with two preferences would be placed at a higher position on the list than applicants that hold only one, etc.

- **Ranking**
Ranking allows applicants to be prioritized on the waiting list based on the weight of preferences. PHAs can assign ranking categories to preferences so that all applicants that hold certain preferences will be selected first. Applicants holding the second highest designated preference will be selected second, and so on. PHAs may assign points to each preference based on discretion and use the total preference points for each applicant to determine selection order. For example, if a PHA adopted a homeless preference (assigning 5 points), a veteran's preference (assigning 3 points), and a residency preference (assigning 1 point), an applicant family that qualified for all three would receive 9 points and be selected ahead of a family that only qualified for 8 preference points.

PHAs may also apply a system that admits a certain number of applicants without a preference for every certain number of applicants admitted with a preference. For example, PHAs may develop a system indicating for every three applicants admitted, two will be chosen based on preferences and one will be chosen at random. PHAs are encouraged to conduct quality control reviews to identify weaknesses in how preferences are applied and to train staff to ensure accuracy and consistency when selecting applicants from the waiting list. . In addition, periodically evaluating the characteristics of the applicants benefiting from each preference helps ensure ongoing compliance with fair housing and civil rights requirements.

6 Selection from the Waiting List

With the exception of transfers as described below, vacancies will be filled by applicants selected from the PH program waiting list. As units are expected to become available, the PHA selects eligible applicants from the waiting list to begin the eligibility determination and leasing process. These applicants must be selected from the waiting list based on one of the following methods after all applicable preferences are applied:⁶⁰

- **Lottery or Other Random Technique**
 - This method allows PHAs to select applicants with the same priority from the waiting list in a random order rather than using the dates and times of submission. In many circumstances, a lottery or random selection can help a PHA ensure that its selection practices comply with all applicable fair housing and civil rights requirements by ensuring an equal opportunity for similarly eligible applicants to be selected. If the PHA has a waiting list with far more applications than it can assist in a reasonable period of time, they can establish lottery rules in advance to limit the number of applications that will be placed on the waiting list. While a lottery or other form of random selection is ideal for large or medium-sized PHAs where the demand for housing far exceeds availability, it can be an effective tool for PHAs of all sizes. HUD encourages PHAs to use this method unless the PHA has a specific reason to

⁶⁰ 24 CFR § 960.206(e)(1)

consider first-come-first-serve to be a more appropriate method for its specific circumstances.

- Date and Time Stamp of Application
 - This method of selecting applicants is based on the receipt of an application and will prioritize submissions based on a first come, first serve basis. If the PHA has a preference system, generally applicants that qualify for a preference will be offered a unit before applicants that may have applied earlier but have no preference. A first come, first serve system can impose barriers for individuals with disabilities, those with inflexible work or family care responsibilities, as well as those who live in farther neighborhoods, or may violate a PHA’s affirmative marketing requirements.

PHAs are encouraged to consider the implications each selection method may have. For instance, ordering a waiting list by the date and time of application may result in an adverse effect to applicants who cannot travel to the property because they have a disability, caretaking responsibilities, or other reasons, especially when the PHA opens its waiting list periodically. Therefore, the PHA must be prepared to make necessary modifications in its process to mitigate this effect, such as mailing applications to individuals with disabilities well in advance of this “first-come, first-served” opening and allowing submission of applications by mail or electronically.⁶¹ Further, when considering access to applicants with disabilities, PHAs are encouraged to consider using a lottery or other random choice technique because these techniques significantly minimize the need for special procedures or other administrative steps to mitigate adverse effects that may be costly and time consuming even when not considered an undue burden under Section 504 of the Rehabilitation Act of 1973.

Regardless of the selection method, the PHA must leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method and preferences specified in the PHA plan.⁶² PHAs may never select families for admission to the program in an order different from the order on the waiting list for the purpose of selecting higher income families for admission to the program. In addition, PHAs are required to offer designated accessible mobility and sensory units required by HUD’s Section 504 regulation for individuals with disabilities to families which include individuals with disabilities who require such features before offering them to other families; if there is no family who requires the accessibility features on the waiting list, the PHA will require that a family who moves into the unit and does not require the accessibility features sign a lease addendum agreeing to move if another family requires the accessibility features.⁶³

6.1 Transfers Prioritized over Waiting List Applicants

Transfers are prioritized according to standards established by the lease and the PHA’s ACOP. Emergency transfers due to physical hazards are of the highest priority because of their immediate nature and the fact that PHAs could potentially be in violation of its responsibilities under the lease for failure to correct such hazards. Many PHAs establish multiple categories for transfers to make priorities clear and manageable. The following list is an example of how transfers could be prioritized:

1. Emergency due to physical hazards;
2. Emergency due to other causes;

⁶¹ Notice PIH- 2012-34

⁶² 24 CFR § 960.206(e)(2)

⁶³ 24 CFR § 960.206(c); 24 CFR § 8.27(b)

3. Demolition, disposition, revitalization, or rehabilitation;
4. Reasonable accommodation;
5. VAWA emergency transfer;
6. Occupancy standards;
7. Split family;
8. Incentive;
9. Tenant-initiated.

Generally, the types of transfers that take precedence over waiting list admission are:

- Emergencies (including those for physical hazards, VAWA, and other causes);
- Reasonable accommodations;
- Demolition, disposition, revitalization, and rehabilitation;
- Incentive; and
- Occupancy standards transfers.

However, this list will vary by local needs. HUD strongly encourages PHAs to include which transfers take priority over waiting list admissions in the ACOP. A full description of each type of transfer can be found in the *Transfers* chapter of the Public Housing Occupancy Guidebook.

7 Income Targeting Requirements

HUD requires PHAs to ensure that at least 40 percent of the families admitted to the Public Housing program during each PHA fiscal year are extremely low-income families.⁶⁴ The annual gross income of the applicant family is used for income-targeting purposes and must meet its income targeting requirement over the course of the PHA's fiscal year. Deviations from the 40 percent extremely low-income target are allowed during the year as long as the target is met by the end of the PHA's fiscal year.⁶⁵

With HUD approval, a PHA may admit a lower percentage of extremely low-income families if consistent with the agency's PHA Annual Plan. Additionally, HUD may determine that certain circumstances necessitate the use of a lower percentage, such as the following:

- The PHA has opened its waiting list for a reasonable time for admission of extremely low-income families residing in the same metropolitan statistical area (MSA), micropolitan statistical area (MicroSA), or non-metropolitan county, both inside and outside the PHA jurisdiction;
- The PHA has notified the public of the opening and has conducted outreach and marketing to extremely low-income families. This marketing and outreach shall target families on the waiting lists for the public housing programs and HCV at other PHAs with jurisdiction in the same MSA, MicroSA, or non-metropolitan county;

⁶⁴ 24 CFR § 960.202(b)(1). As of July 1, 2014 (the effective date of the Federal Register Notice 79 FR 35940, issued on June 25, 2014), PHAs must take into account the new definition of ELI for the Public Housing program. The new provision may provide some financial relief to PHAs by permitting them to "target" ELI families with slightly higher incomes than the previous rule allowed. See 42 U.S.C. 1437n(a)(2); 79 FRN 35940, 35942 (June 25, 2014)

⁶⁵ 24 CFR § 960.202(b)(1)

- Despite the actions taken above, there are not enough extremely low-income families on the PHA's waiting list to fill available slots in the program during any fiscal year for which use of a lower percentage is approved by HUD; and
- Admitting additional very low-income families to the program, other than extremely low-income families, will substantially address worst-case housing needs, as determined by HUD.

When determining whether the PHA is in compliance with income-targeting requirements, the PHA would not include admission of a low-income family that is “continuously assisted” under the 1937 Housing Act in its calculation. PHAs are encouraged to monitor the income levels of its waiting list applicants and new admission participants regularly to ensure that income-targeting requirements are met by the end of each fiscal year. The methodology used to ensure that income-targeting requirements are met must be included in the PHA's ACOP.⁶⁶ The methodology can be as simple as a statement indicating that the PHA will monitor to ensure that at least 8 out of every 20 new program admissions will be extremely low-income families.

8 Designated Housing for the Elderly and Persons with a Disability

A PHA may designate projects or portions of a public housing project (buildings, floors, or units)⁶⁷ for occupancy by elderly families only, disabled families only, or a mix of both elderly and disabled families (referred to as mixed population).⁶⁸ PHAs prepare a designation plan, which serves as an application for designation when submitted to HUD for approval and, must be referenced in the PHA's Annual Plan.⁶⁹ Once approved, the designation plan becomes a supporting document to the Annual Plan.

Just as each community has a unique mix of people, housing needs, and housing supply, each Designated Housing Plan must be assessed individually. Once a PHA submits a designated housing plan to HUD for approval, the Department must notify the PHA within 60 calendar days of submission whether the plan complies with the requirements outlined in Section 7(d) of the US Housing Act of 1937. If HUD does not notify the PHA within 60 calendar days, the plan is automatically approved.⁷⁰ If approved, the term of the original designation is five years and may be renewed in increments of two years with HUD approval.⁷¹

8.1 Required Elements of the Designated Housing Plan

The designated housing plan must include a justification for the designation and a description of the project as described below.⁷²

⁶⁶ 24 CFR § 960.202(b)

⁶⁷ The designated housing can consist of part of a building, an entire building, multiple buildings, or a percentage of units in a specific building. When the PHA designates a percentage of units in a building or buildings, the units need not be contiguous, or even identified by apartment address, but can instead “float” based upon which units are ready for occupancy when the percentage drops below its target and the qualified applicant is offered a unit.

⁶⁸ 42 USC 1437e

⁶⁹ 24 CFR § 903.7(i); Note that approval of the PHA Plan does not constitute approval of a PHA's designated housing plan. The designated housing plan application and approval process is a separate process.

⁷⁰ 42 USC 1437e(e)

⁷¹ 42 USC 1437e(f)(1)-(2)

⁷² 42 USC 1437e(d)

Justification

PHAs must show that the plan supports the housing goals for the jurisdiction. PHAs in communities with local consolidated plans (population is greater than 50,000) must demonstrate that the designation is consistent with the goals and priorities of the plan, that is, the designation is necessary to meet the housing needs of the jurisdiction. For PHAs in communities under 50,000, the designation plan must support the State consolidated plan. If the State plan is silent regarding a PHA's housing goals, the plan must demonstrate that the designation is necessary to meet the low-income needs of the jurisdiction.

Project Description

PHAs must provide a description of all sites to be designated including the type of residents to which the designation will apply, any supportive services to be provided to the residents of the designated property, and how the design and related facilities of the property accommodate the special environmental need of the intended occupants. PHAs also must describe any plans to secure additional resources or housing assistance to provide assistance to families that may have been housed if occupancy in the project were not restricted. Resources might include: voluntary transfers to other PHA units, use of Housing Choice Vouchers, application for additional vouchers targeted to the population affected by the designation or combinations.

8.2 Implementing a Designated Housing Plan

Eligible applicant families retain their right not to accept an offer of designated housing. Such families would retain their position if they prefer to occupy a unit in a general occupancy project. The occupancy priority for designated housing works in combination with requirements to match the characteristics of the family to the type of unit available, for example, number of bedrooms and accessibility features.⁷³

For projects designated for the elderly, only elderly families may be admitted to units or buildings covered by the HUD-approved Designation Plan. When there are insufficient elderly families on the waiting list, near-elderly families (head or spouse ages 55 to 61) may receive a priority for this type of unit. In mixed population projects, elderly families and disabled families receive equal priority for admission to such units.⁷⁴

Lease compliant residents affected by the designation may not be evicted or otherwise required to vacate if HUD approves a PHA's designated housing plan. PHAs may not harass or engage in activities to intimidate or force a resident to move. However, such residents may opt to move voluntarily. The PHA can foster this type of move with cash incentives and explaining other relocation benefits. For families who agree to be relocated, the PHA must provide notice of the designation and an explanation of available relocation benefits, access to comparable housing (including HCV assistance at a comparable rental rate), and actual, reasonable moving expenses.⁷⁵

9 Fair Housing and Civil Rights Requirements

⁷³ 24 CFR §§ 8.3, 8.4, 8.20-8.33; 24 CFR § 960.206(c)

⁷⁴ 42 USC 1437e(a)

⁷⁵ 42 USC 1437e(b) and (c)

Waiting list policies and practices must comply with fair housing and equal opportunity requirements.⁷⁶ Before opening the waiting list, PHAs must advertise in a variety of media covering a broad geographic area, such as local newspapers, radio, websites, listserves, minority media; outreach to community-based organizations, such as social service agencies and religious institutions; and any other suitable media outlets (websites, social media or other online platforms, local cable TV, and radio) throughout the housing market area.⁷⁷ As many organizations serve only a subset of eligible residents, in general, the more organizations that are contacted, the more likely marketing efforts are to reach a diverse pool of applicants across the market area. Reaching out to local organizations across the market area with ties to a wide range of prospective applicants may also be effective, such as social service providers (e.g., foodbanks, legal-aid offices, health clinics), employers, grocery stores and other businesses, local governmental offices, and community gathering places (e.g., senior centers, recreation centers, libraries, schools, and places of worship).

A PHA's advertising or outreach plan may be included in the ACOP. PHA announcements include detailed, clear, and consistent information— including descriptions of property amenities, approximate rent, procedures for obtaining and submitting applications, eligibility criteria, and explanations of how tenants will be selected (e.g., by lottery according to preferences.. Generally, marketing occurs for a significant period of time (e.g. 60 days) prior to the opening of a waiting list to ensure that there is enough time for the information to reach all potential applicants. If the application period is limited, the announcement should provide clear information on when the application period will end. PHAs are encouraged to find out from applicants how they heard about the property to ensure that the PHA's marketing efforts are succeeding and that word-of-mouth is not driving applications, which can raise fair housing problems. PHA's are strongly encouraged to consider the PHA's housing needs as stated in the PHA's Five-Year and Annual Plan when making the advertising and outreach plan.

PHAs must ensure effective communication with persons with disabilities in all notifications and communications. Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA) regulations require the PHA to ensure effective communication with applicants, participants, and members of the public and to furnish appropriate auxiliary aids and services where necessary to afford individuals with hearing and vision impairments an equal opportunity to access and participate in the program. PHAs must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is provided in appropriate accessible formats as needed, e.g., Braille, audio, large type, accessible online formats, assistive listening devices, and sign language interpreters. PHAs must provide, at their expense, auxiliary aids, and services for effective communication with their residents and applicants, as well as employees.⁷⁸

PHAs must also take reasonable steps to ensure meaningful access to their programs and activities to individuals with limited English proficiency, in accordance with the four factors described in HUD's LEP Guidance.⁷⁹ In addition, PHAs may never require the applicant to provide, or pay for, his/her own interpreter. Rather, it is always the PHA's responsibility to provide a qualified interpreter. However, the PHA's responsibility to provide a qualified interpreter does not preclude an individual's right to have a friend, relative or advocate accompany him or her when communicating with the PHA. The PHA must not rely on an accompanying adult to facilitate communication unless it is an emergency, or where the individual specifically requests that the accompanying adult interpret or

⁷⁶ 24 CFR § 960.202(c)(3)

⁷⁷ 24 CFR § 964.30

⁷⁸ 24 CFR § 8.6; 28 CFR part 35, Subpart E

⁷⁹

facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances. PHAs must not rely on minor children to interpret or facilitate communication.⁸⁰

Reasonable Accommodation Examples

Below are examples of accommodations PHAs may provide to persons with disabilities upon request. These accommodations may also be used to enhance communication with elderly persons.

- Providing persons who are deaf or hearing-impaired accessibility through TTD/TTY machines, access to relay systems, video phone with ASL interpretation, or other arrangements to facilitate effective communications.
- Providing a sign language interpreter.
- Providing materials in Braille, via e-mail and accessible electronic formats, or on tape to persons who are blind or are visually impaired.
- Conducting home visits for families that are not physically able to report to a PHA site.

⁸⁰ "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 72 FR 2732, 2740 (2007), *available at*: <https://www.hud.gov/sites/documents/FINALLEP2007.PDF>.