

CHAPTER 4

CHAPTER 4: SUITABILITY FOR TENANCY

4-1. APPLICANT EVALUATION

a. POLICY

- (1) PHAs must evaluate each applicant to determine whether the applicant would be reasonably expected to have a detrimental effect on the other tenants or on the project environment. The PHA must deny admission to any applicant whose habits and practices may be expected to have a detrimental effect on other tenants or on the project environment.
- (2) The PHA must make an informed judgment about the applicant's suitability as a tenant and must assure that selection among otherwise eligible applicants is objective and reasonable. This includes:
  - (a) examining the applicant's history of meeting financial obligations, especially rent.
  - (b) determining whether the applicant has a history of:
    - o disturbing the neighbors;
    - o destroying property;
    - o living or housekeeping habits which could adversely affect the health, safety, or welfare of other tenants; or
    - o criminal activity, especially involving violence.
- (3) The PHA may also deny admission to applicants who:
  - (a) currently owe rent or other amounts to the PHA in connection with the public housing or Section 8 programs. (But see discussion section, item 6.)
  - (b) have committed fraud in connection with any Federal housing assistance program.

- (4) PHAs may not require that:
  - (a) applicants have a minimum income;
  - (b) applicants work;
  - (c) applicants participate in a job training program; or that
  - (d) those who are eligible for various welfare or benefit programs apply for and receive those benefits (although the PHA may encourage them to apply).
  
- (5) PHAs must consider only information that is reasonably related to the individual's attributes - not what might be attributed to a particular group or class.
  - (a) Federal law prohibits discrimination based on race color, creed, religion, national origin, sex, age, or handicap.
  - (b) The PHA may not exclude applicants because they:
    - o have children;
    - o have children born out of wedlock;
    - o are on welfare; or
    - o are students.
  
- (6) The PHA may not charge the applicant for the costs involved in the evaluation. In particular, the PHA may not charge for processing the application or for doing a credit check.

b. DISCUSSION

- (1) A thorough evaluation of applicants is one of the PHA's most important jobs. It is essential in maintaining well-managed projects.
- (2) If an evaluation of a particular applicant turns up something detrimental, the PHA may need to do a more complete investigation of that applicant.

- (3) Some acceptable forms of applicant evaluation are:

- (a) interviewing the applicant;
  - (b) checking with a current or previous landlord;
  - (c) contacting employers;
  - (d) getting information from social workers, police departments, or parole officers;
  - (e) doing a credit check; and
  - (f) making a home visit.
- (4) A home visit can be especially useful in assessing living and housekeeping habits. However, PHAs should be sensitive to differences in lifestyles and focus on identifying behavior that would pose a health hazard or be destructive to property or a nuisance to other tenants.
- (5) PHAs with long waiting lists may prefer to do an initial assessment of a family's suitability at the time of application, but wait to do a more complete evaluation until shortly before admission. By doing this the PHA avoids the time and expense involved in evaluating applicants who will drop from the waiting list before their names can be reached. However, in deciding whether to delay a thorough evaluation, PHAs should bear in mind the applicant's interest in knowing as soon as possible whether he or she is likely to be admitted.
- (6) As an alternative to denying admission to an applicant who owes the PHA money, the PHA may offer the applicant the opportunity to enter into an agreement to pay the amount owed. This could involve setting up a specific timetable and incorporating that timetable into the lease.
- (7) Lack of a credit history (as opposed to a poor credit history) is not sufficient justification to reject an applicant.
- (8) PHAs may deny admission if there is an indication that the use of alcohol or drugs would likely result in conduct that would adversely affect the project environment.
- (9) PHAs may not deny admission based solely on an association between the applicant and a person who will not reside in the unit.

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- (10) PHAs may consider an applicant's arrest record, but should be careful about making a determination based solely on an arrest record if no convictions followed.
- (11) A criminal record should not automatically exclude an applicant from consideration. The PHA should determine whether the person would be a suitable tenant.
- (12) The same standards of tenant suitability that the PHA uses for applicants should be used in evaluating a person who is joining a family already in occupancy. The PHA should determine that the person meets its standards prior to adding the person's name to the family's lease.

c. REFERENCES

24 CFR 960.204, 960.205

Federal civil rights laws listed in paragraph 1-3(c)

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\*4-2. APPLICANTS WITH HANDICAPS

a. POLICY

- (1) Generally, the PHA may not inquire if an applicant, a person residing or intending to reside with an applicant or any person associated with an applicant has a handicap or inquire as to the nature or severity of a handicap. The PHA is permitted to make inquiries to the extent necessary to:
  - (a) Determine an applicant's eligibility or level of benefits under the program. When the sole basis for determining an individual's eligibility is based on the person's handicap or disability, the PHA must verify the handicap or disability.
  - (b) Determine if an applicant is qualified for a unit available only to persons with handicaps such as an independent group residence or a project serving frail elderly.
  - (c) Determine if an applicant is entitled to a priority for a specially designed unit such as a barrier-free unit if the applicant

desires such a unit or priority or determine if a handicapped applicant may qualify as an "elderly family" and be entitled to a priority for admission to an elderly project.

- (d) Verify an individuals handicap to determine whether a "reasonable accommodation" in rules, practices or services requested by a handicapped applicant may be necessary.
- (2) A PHA may not require applicants to provide access to confidential medical records in order to verify handicap or disability.
- (3) When a PHA makes inquiries as to the nature and severity of handicaps, it must do so for all applicants to whom such inquiries might pertain whether or not they have handicaps. For example, if the PHA has specially designed units for persons with disabilities, it should ask all applicants if they or a member of their family wish to be considered for such a unit-and, if so, if they would benefit from such a unit.

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- (4) Subject to the limitations in subparagraphs (1) and (2) above, the PHA may make inquiries necessary to determine the applicant's eligibility, level of benefits and suitability for tenancy provided such inquiries are made of all applicants whether or not they have handicaps. This includes:
  - (a) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance or is currently engaging in the illegal use of drugs. (See Section 512 of the Americans with Disabilities Act of 1990, 104 Stat. 327.)
  - (b) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.
- (5) A handicapped applicant who does not meet the PHA's criteria for suitability for tenancy must be admitted if the applicant can meet the PHA's criteria for suitability through "reasonable accommodation."
- (6) Objectionable behavior impacting on the applicant's ability to fulfill essential lease obligations may form the basis for rejection of a

handicapped applicant, where such behavior cannot be corrected by reasonable accommodation, even if the behavior is related to the disability. Examples of these types of objectionable behavior include failure to pay rent, disturbing neighbors, destroying property or living or housekeeping habits adversely affecting the health, safety or welfare of other persons.

- (7) The PHA must not assume that the presence of a particular handicap or disabling condition automatically disqualifies an applicant for participation in the program or for a particular dwelling or type of dwelling. For example, the PHA may not deny a mobility impaired applicant an opportunity to move into a unit with its only bathroom on the second floor. The PHA may not request a special showing

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by a handicapped applicant that he or she can comply with the terms of the lease based on speculation that the applicant's disability may make compliance more difficult.

#### b. DISCUSSION

- (1) An elderly family (which includes a family where the head or spouse of any age is handicapped or disabled as defined in the United States Housing Act of 1937 as amended) receives a \$400 deduction from income and a deduction of un-reimbursed medical expenses in excess of three percent of Annual Income for determining rent. If an applicant's sole qualification as an elderly family depends on a disability or handicap, the PHA must verify the existence of the disability or handicap or the applicant must forgo the deduction.
- (2) PHAs must make inquiries about the nature and severity of handicaps to the extent necessary to determine whether the family's adjusted income should reflect a deduction based on handicapped assistance expenses. (See 24 CFR 913.102.)
- (3) PHAs must make inquiries about the nature and severity of handicaps to the extent necessary to determine whether a live-in aide is essential to the care and well being of a handicapped or disabled person. (See 24 CFR 913.102 and 24 CFR 913.106(c)(5).)

- (4) Verification of disability includes receipt of Social Security or Supplemental Security Income disability benefits. If such benefits are not being received, proof of residence in an institution, documents showing hospitalization for a disability or verification by a health or service professional such as a social worker may provide a basis for verification. As in verification generally, direct contact with a third party is preferable to accepting documents provided by the applicant.
- (5) The PHA may not require a statement or verification from a physician when adequate verification is available from other sources.

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- (6) In evaluating an applicant with a handicap, the PELA must consider "mitigating circumstances" just as it does for any applicant. In the case of a person with handicaps, mitigating circumstances may include participation in treatment programs and the availability of services and assistance from the community, friends and family.
- (7) When an applicant (including applicants who are not handicapped) cannot provide the customary information required to verify suitability for tenancy such as references from former landlords and credit reports, the PHA should consider other sources of information such as personal references, institutions where the applicant has lived, doctors, therapists and service agency personnel. Home visits and interviews also provide valuable information for making a determination of suitability for tenancy.

#### c. REFERENCES

- (1) Section 504 of the Rehabilitation Act of 1973, as amended.
- (2) The Fair Housing Act.
- (3) Section 512 of the Americans with Disabilities Act of 1990.
- (4) 24 CFR Part 8 - Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.
- (5) 24 CFR Part 14 - Implementation of the Fair Housing

Amendments Act of 1988.

- (6) 24 CFR Part 912 - Definition of Family and other related terms.
- (7) 24 CFR Part 913 - Definition of income limits, income, rent, etc.
- (8) 24 CFR Part 960 - Admission To, and Occupancy of, Public Housing.\*

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#### 4-3. MITIGATING CIRCUMSTANCES

##### a. POLICY

- (1) If a PHA receives unfavorable information about an applicant, it must consider the possibility of more favorable future conduct. This would be especially important in evaluating applicants who are borderline in the PHA's evaluation process. These families may have a mixed credit record, some housekeeping problems, a police record, or a good and a bad report from previous landlords.

##### b. DISCUSSION

- (1) Some mitigating circumstances which a PHA could consider in evaluating applicants who do not fully meet its standards for admission are:
  - (a) That the applicant shows evidence of rehabilitation as indicated by a report from a parole officer or social worker.
  - (b) That the family is aware of the-problem they have been having and is taking steps to improve the situation, such as getting counseling or participating in an alcohol or drug treatment program.
  - (c) That the family is likely to improve its financial situation because:
    - o its rent will be lower once the family is admitted to public housing; or
    - o participation in a job training program or improved employment prospects will probably result in higher family income.
  - (d) That the family would be able to receive vendor payments.

(2) Vendor payments

- (a) Vendor payments involve the direct payment of the rent from a welfare agency or other source to the PHA. PHAs may want to consider accepting vendor payments for families which have been delinquent in paying rent.
- (b) Vendor payments are a departure from the landlord-tenant relationship and should be considered only on a case-by-case basis. They should not

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be applied to an entire group of tenants such as to all families receiving AFDC benefits.

- (c) Vendor payments are permitted in the Aid to Families with Dependent Children (AFDC) program if the state welfare plan provides for them and:
    - o the family has misused funds as evidenced by nonpayment of bills. (In this case the payments, usually referred to as protective payments, cannot be continued for more than two years and are usually for a shorter period.)
    - or
    - o the welfare recipient requests the vendor payments. (In this case the payments continue until the recipient requests that they be stopped.)
  - (d) It may be possible for a family to arrange for vendor payments to be made by an employer.
- (3) In deciding whether to admit applicants who are borderline in the PHA's evaluation process, the PHA should recognize that for every marginal applicant it admits, it is not admitting another applicant who clearly meets the PHA's evaluation standards.

c. REFERENCES

24 CFR 960.205(d)

45 CFR 234 (vendor payments-AFDC)

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## 4-4. NOTIFYING APPLICANTS OF THEIR STATUS

## a. POLICY

(1) When a PHA determines that:

- (a) the applicant is eligible,
- (b) the applicant meets the PHA's admission standards, and
- (c) the PHA has an appropriate size and type of unit in its inventory,

the PHA must notify the applicant promptly and indicate the approximate date that the family could be offered a unit to the extent that date can be estimated.

(2) When a PHA determines that:

- (a) the applicant is ineligible,
- (b) the applicant does not meet the PHA's admission standards, or
- (c) the PHA does not have an appropriate size and type of unit in its inventory, the PHA must notify the applicant promptly and state the basis for the determination. If the applicant requests it, the PHA must provide an informal hearing within a reasonable period of time after the applicant has been notified.

(3) The grievance procedures for public housing tenants do not apply to PHA determinations affecting applicants.

## b. DISCUSSION

(1) Since applicant eligibility and whether the PHA has the appropriate size and type of unit in its inventory can often be determined quickly while applicant evaluation can take some time, a PHA may want to have two notifications. The first could indicate that the applicant had been tentatively approved for admission pending a more complete evaluation, the second that the applicant had been fully approved. If a two-notification system is used, both notifications should indicate the approximate date that a unit could be offered.

(2) If administratively feasible, PHAs should inform

applicants of changes in their status during the waiting period. A PHA must

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inform applicants who have been approved for admission if it later decides to reject their application, and must give the reason for the rejection.

- (3) If the approximate date a unit could be offered cannot be reasonably determined, the PHA should at least advise the family of its relative position on the waiting list (e.g., 16th place among 21 families needing a three-bedroom unit).
- (4) The provision for an informal hearing for unsuccessful applicants is not intended to impose a burdensome-procedure on PHAs. It is simply giving the applicant an opportunity to be heard by a PHA official other than the person who made the determination that the applicant could not be admitted.
- (5) PHAs should consider providing (but are not required to provide) an informal hearing to applicants who disagree with the position they have been given on the waiting list, the size and type of unit they will be offered, or other factors affecting their application.

c. REFERENCES

U.S. Housing Act of 1937, Section 6(c)(3)

24 CFR 960.207