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CHAPTER 4. IMPLEMENTATION OF THE AFFIRMATIVE MARKETING  
PLAN - APPLICANT'S RESPONSIBILITIES

SECTION 1: INTRODUCTION

4-1. INTRODUCTION. This Chapter outlines the specific obligations of both the applicant and any management or sales agents of the applicant for implementing the HUD-approved AFHM Plan. It applies to all programs covered by the AFHM Regulations (24 CFR Part 200, Subpart M). It discusses the steps the applicant takes during each phase of the Plan's implementation. These steps include:

- A. Outreach to those groups identified in the AFHM Plan as least likely to apply for the proposed housing and to the general public; and
- B. Submission to the Field Office of documents related to the Plan, e.g., copies of media advertising, letters to community contacts, and HUD-approved reports such as the Report on Applicants for Multifamily Rental Housing, Form HUD-935.5 (Appendix 15) which is submitted at certain stages of the application taking cycle.

This Chapter also outlines activities relating to continued marketing of multifamily projects after initial rent-up has been completed and the Field office's role in assisting the applicant during the initial occupancy period.

SECTION 2: APPLICANT'S ROLE IN IMPLEMENTING THE PLAN

4-2. NOTIFICATION OF INTENT TO BEGIN MARKETING. The Compliance Procedures for AFHM Regulation (24 CFR 108.15) require the applicant to submit to the Field Office having jurisdiction over the area in which the proposed housing is located a Notice of Intent to Begin Marketing no later than 90 days prior to the commencement of any sales or rental marketing activities. The notification shall be in writing and shall state the date on which the applicant proposes to commence such marketing activities.

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4-3. PREOCCUPANCY CONFERENCE. The Compliance Procedures for

AFHM Regulations (24 CFR 108.15) state that upon receipt of the notification of intent to begin marketing, the FHEO Director may schedule a preoccupancy conference with the applicant and its advertising firm, rental and/or sales agent. The FHEO Division should coordinate its preoccupancy activities with those of Housing Management, e.g., by holding a joint conference. At this conference, according to Part 108, the previously approved AFHM Plan shall be reviewed with the applicant to determine if the Plan and/or its proposed implementation require modification prior to initiation of marketing activities.

- 4-4. INITIATION OF MARKETING. Regardless of whether a preoccupancy conference takes place, the applicant shall commence the actual implementation of the Affirmative Marketing Plan no later than 90 days prior to the commencement of initial occupancy. Purchasers of HUD-owned projects with mortgage insurance shall commence the implementation of the AFHM Plan upon assuming control of the property.
- 4-5. MARKETING FOR INITIAL SALES OR RENT-UP. In carrying out the provisions of the HUD approved Plan, the Applicant shall implement the following procedures:
- A. Pre-Marketing Activities. Prior to initiating general marketing, contact the commercial media, fair housing groups, employment centers, civil rights organizations and the community contacts which have been identified in the Plan as resources for attracting persons who are "least likely to apply" for the housing.
  - B. Outreach Documentation. Establish a system for documenting outreach activities and for maintaining records which provide racial, ethnic and gender data on all applicants for the proposed housing. The system should be consistent with any reporting and recordkeeping requirements stated in the Regulations governing HUD-assisted housing programs to which the AFHM requirements apply. It should include all documentation pertaining to:
    - 1. How the groups considered least likely to apply were identified;

- 2. The special outreach activities undertaken to attract these groups and the general public to the housing;

3. The training given to staff on Federal, State and local civil rights laws;
  4. The selection of the community contacts who assisted in implementing the AFHM program;
  5. The implementation of the Department's Fair Housing Advertising Regulations stated at 24 CFR Part 109;
  6. Race and ethnicity of all applicants for the housing; and
  7. Race and ethnicity of all individuals who visit the project or subdivision in person.
- C. Fair Housing Training. During the 90-day period prior to the commencement of taking applications or sales, provide training to all management or sales staff in Federal, State and local fair housing laws, AFHM objectives and the HUD-approved AFHM Plan. The timing of the training is entirely at the discretion of the applicant.
- D. Submission of Materials to HUD. Submit materials to the Field Office which document activities taken to implement the approved AFHM Plan. These submissions are required pursuant to the Regulations at 24 CFR 108.20(a) and include:
1. Copies of advertisements, brochures, leaflets, and letters to community contacts (community organizations, fair housing groups, major employment centers, referral services, and other contacts) utilized as part of the marketing program;
  2. Photographs of project signs;
  3. A copy of the instructions used to train sales/rental staff on Fair Housing laws; and
  4. Anticipated dates of advertising and occupancy.

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- E. Listing of Visitors. Prior to initiation of marketing, the applicant may compile a list of those persons who indicated an interest in applying for the housing by race, ethnicity and gender of the head of household.

Such persons shall not be considered applicants and placed in the applicant pool until they have filed a formal application during the regular, publicized application taking period.

SECTION 3: ACTIVITIES DURING INITIAL MARKETING

- 4-6. OVERVIEW. This section discusses the activities to be undertaken by the applicant after the commencement of marketing activities. These tasks include evaluation of both the Plan's effectiveness during and after implementation and the need for modification where appropriate; and recordkeeping and reporting.
- 4-7. ASSESSMENT OF THE PLAN'S IMPLEMENTATION. The applicant shall monitor and carefully evaluate the results of the special outreach and general marketing activities undertaken during the initial sales or rent-up period. Through such evaluation the applicant can determine whether the provisions of the Plan have been successfully implemented and how effectively the affirmative marketing program has helped attract buyers or tenants of majority and minority groups and, where appropriate, disabled persons and families with children. Examples of factors to be examined include:
- A. The racial/ethnic composition of the population that responded to the advertising used as part of the special outreach activities.
1. Definition. This population consists of all persons who responded to the outreach activities connected with the project or subdivision by:
- a. Visiting or inquiring about the project, and

- b. Basing a decision to apply formally for the project on that visit or inquiry. This data is recorded on the Form HUD-935.5 which is submitted periodically during the marketing period. (See paragraph 4-9A. for more detailed instruction on submitting these forms.)
2. Comparison with Designations of "Least Likely to Apply" Groups. The applicant should compare this data with the designations of the groups identified as least likely to apply without special outreach. If this group of respondents does not include

significant numbers from those groups identified as least likely to apply, the marketing program should be carefully reviewed to determine:

- a. Whether the designations of the groups as least likely to apply were appropriate in light of marketing experience related to the project in question; and
  - b. Whether the outreach effort was insufficient and adjustments in the advertising strategy or other outreach efforts are warranted.
- B. Measures relating directly to special outreach and other advertising techniques used in the marketing program. Such measures can include a running tabulation of responses to questions relating to the manner in which the prospective buyer or renter had heard about the housing. Through such techniques the applicant can determine whether:
1. Foreign language or minority media are effective marketing mechanisms;
  2. The Equal Housing Opportunity Logotype effectively conveys to such buyers or renters the message that they are welcome to apply and will not encounter discrimination;
  3. Community contacts used by the applicant are advertising housing effectively; and
  4. Members of groups targeted for special outreach activities are learning about the housing through informal means rather than commercial media.

- C. Consultation on changes. If the applicant concludes that changes to the Plan are necessary, it should, as early in the marketing process as possible, discuss such changes with the Director of FHEO and submit them for the Director's review and approval.
- 4-8. MODIFICATION OF THE HUD-APPROVED AFHM PLAN. Modifications to the HUD-approved AFHM Plan may be appropriate under certain circumstances prior to initial marketing, after commencement of initial marketing, or after rent-up is completed. Circumstances which may generate modifications in the HUD-approved AFHM Plan include:

- A. Significant changes in the parties implementing the Plan, e.g., sales company, management company or owner. If such changes occur, the owner should identify the new parties and inform HUD of such changes.
- B. Significant changes in the demographic, e.g., racial/ethnic characteristics of the neighborhood in which the housing is located. Such changes can affect the direction of outreach activities, i.e., the group or groups within the eligible population that have been identified as least likely to apply. For example, in a market area whose population was essentially Black and white at the time of application, in the original AFHM Plan, the applicant may have selected non-minorities (whites) as the group least likely to apply for a project located within a predominantly Black area. During the year in which the Department had been considering the applicant's request for project mortgage insurance, the locality had acquired a significant Hispanic population which did not exist even one year before. The applicant had to change its AFHM Plan in response to this demographic change by selecting Hispanics and non-minority whites as the groups considered least likely to apply and by translating its advertising materials into Spanish.
- C. New information with respect to community contacts which may be helpful in reaching the target groups, e.g., establishment of a Community Housing Resource Board since HUD approval of the Plan, or the dissolution of a housing referral service previously listed in the HUD-approved Plan.

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- 4-9. RECORDKEEPING AND REPORTING REQUIREMENTS. The Compliance Procedures for Affirmative Fair Housing Marketing (24 CFR Part 108), the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, as amended, Executive Order 11063 and the reporting and recordkeeping requirements stated in regulations for programs to which AFHM requirements apply all require the applicants to furnish certain data, in order that HUD may carry out its monitoring responsibilities under applicable civil rights laws. Accordingly, each applicant shall collect and maintain information relating to sales and rental activity, including documentation connected with the outreach program, and data by race, ethnicity, handicap and gender for both occupants and prospective renters/buyers. The

applicant shall maintain this data for the most recent three-year period of operation or portion thereof, if the project or subdivision has not been in operation for more than three years. In addition, the applicant shall submit periodic reports on the progress of the regular and special outreach activities (Form HUD-935.5) to the Field Office as part of the documentation required by 24 CFR Part 108.

Reporting instructions follow:

- A. Applicants for Multifamily Rental Housing, HUD-935.5 (Appendix 15). Form HUD-935.5 is applicable to all projects with a HUD-approved AFHM Plan that are conducting initial marketing activities. The report must be filed during the initial project rent-up period (following submission of the Notice of Intent to Begin Marketing--see Paragraph 4-2) as soon as either:

NOTE: Data on applications rejected (Section F of the form) is required only for insured subsidized projects.

1. The number of applications received is no more than one-half the number of units in the project;
2. One-half the application taking time period has passed; or
3. The application period has closed. (This may occur, at times, with such speed as to preclude a prior filing under paragraphs 4-9A.1. or 4-9A.2. above, as, for instance, when the number of applications received on the first day of an offering meets the maximum number needed to close the applicant pool).

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- B. Amended Reports. Amended reports are necessary when initial reports are filed pursuant to:
1. Paragraphs 4-9A.1. or 4-9A.2. above. Applicants file an amended report when the application period has closed, screening is completed or all eligibility determinations have been made; or
  2. Paragraph 4-9A.3. above. Screening and eligibility determinations were not included on the initial report (Section E of Form HUD-935.5, and, where applicable, Section F). While this process provides a flexible schedule for filing a report, a

final HUD-935.5 must be filed with HUD when 95 percent of the units are occupied.

- C. Section 8 New Construction and Substantial Rehabilitation Projects. Entities managing Section 8 New Construction, Substantial Rehabilitation and State Agency projects whose Housing Assistance Payments Contracts are still in force shall maintain, in addition to the types of data noted previously, data on the place of previous residency of applicants and approved eligible families. This data is collected in accordance with Section 8 Housing Assistance Payments Program for New Construction Regulation (24 CFR 880.603(b)(4) and 881.603(b)(4)) on the Form HUD-50059, Certification and Recertification of Tenant Eligibility.
- D. Documentation Relating to the Outreach Program (See paragraph 2-9).
- E. Annual Occupancy Reports. The applicant for mortgage insurance under insured unsubsidized multifamily programs submits Form HUD-949, Civil Rights Tenant Characteristics/Occupancy Report, Insured Unsubsidized Housing Programs, upon completion of initial occupancy activities. This report is due by the third Friday in October of each year.

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- 4-10. SELECTION OF HOMEOWNERS FOR FHA-INSURED SALES HOUSING. The applicant for single family mortgage insurance shall select homeowners in a manner consistent with the provisions of the Fair Housing Act, Executive Order 11063, Section 527 of the National Housing Act (which prohibits discrimination in the granting of Federally-insured mortgage loans based on sex and requires lenders to consider on an equal basis the income of both husband and wife in determining the creditworthiness of prospective buyers), and the provisions of the AFHM Plan. If the applicant employs a third party such as a sales agent or real estate broker to conduct the applicant's sales activities, the applicant may be directly responsible for the results achieved by the sales agent. Thus, the applicant should be aware of acts which may adversely affect ability of homeseekers to obtain housing of their choice and impair the achievement of the objectives of the AFHM Plan. The Regulations at 24 CFR 100, Discriminatory Conduct Under the Fair Housing Act, enumerate many illegal and discriminatory real estate marketing practices for



which the applicant can be held legally responsible if they are committed by its brokers or sales agents.

4-11. FUTURE MARKETING ACTIVITIES FOR RENTAL PROJECTS BUILT PRIOR TO 1988. Upon completion of initial rent-up, the applicant initiates appropriate marketing activities for filling vacancies resulting from normal turnover. The applicant may utilize the remaining list of prospective renter/buyers from the initial marketing effort as the waiting list for the project. The applicant is encouraged to contact the Field Office for assistance in adapting the AFHM Plan to the post initial occupancy period. The nature of this adaptation would normally depend on factors such as:

- A. Waiting List. The size and racial/ethnic composition of the waiting list, if one is maintained;
- B. Overall Assessment. The assessment by HUD and the applicant of the effectiveness of the initial marketing program, especially with respect to participation by members of those groups identified as least likely to apply; and
- C. Demographic. Any changes in the demographic and socioeconomic composition of the project area and the housing market area which occurred after the completion of the initial rent-up cycle.