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Bruce Rauner, Governor

Management Bulletin #455

To: Owners/Agents/Managers of
HUD Section 8, 236, 811 and HOME
assisted properties and (#1 only) for
Tax Credits/1602/TCAP

From: Diane Smith, Asst. Director
Asset Management Services

Date: April 28, 2015

Re: New HUD issues to be included
In Properties' Tenant Selection Plans

This Management Bulletin is intended to provide you a list and brief description of four new issues that were published by HUD in late 2014 and early 2015. These four issues are required to be included in each Tenant Selection Plan ("TSP") of every HUD assisted property. Please reference/review the noted HUD Memorandum or HUD Notice to be sure you understand all the **requirements** of each issue below:

- 1. Occupancy Protection for HUD Assisted Households in Properties with Low-Income Housing Tax Credits (this is the only addition that Tax Credit/1602/TCAP properties are required to incorporate into their TSP's.)**

HUD Memorandum published on January 12, 2015, clarifies guidance to Owner/Agents (O/A) who participate in both a HUD-assisted program (e.g. **Project-Based Section 8 or Section 236**) and Low-Income Housing Tax Credits that O/A's may not terminate HUD-assisted tenants who do not meet LIHTC eligibility guidelines. Owners may only terminate tenancy in limited circumstances as prescribed by HUD regulations and by the terms of the lease and must follow HUD and state/local procedures. Termination for reasons other than those permitted by HUD are prohibited. The lease agreement details the grounds for termination of tenancy which do not include failure to meet LIHTC requirements, including LIHTC-specific income and student eligibility rules.

Should an assisted household become over-income and no longer eligible to receive HUD subsidy, i.e. it is determined at annual or interim recertification that the tenant has the ability to pay the full contract rent or market rent, the owner will terminate the housing assistance. However, in accordance with the lease agreement the tenant retains all other rights under the lease including the right to occupy the unit.

In some cases owners have offered incentives to HUD eligible households who become over-income for LIHTC or do not meet another LIHTC requirement to move. Owners may do so as long as the incentives are not paid from Section 8 or FHA project funds.

Owner/Agents must add language to TSP and House rules clarifying that HUD assisted households in LIHTC properties will not be terminated if they fail to meet LIHTC income requirements and student eligibility rules.

2. Use of Marijuana in Multifamily Assisted Properties

HUD Memorandum published on December 29, 2014, issued notice to Owner/Agents (O/A's) of federally assisted housing that the use of 'medical marijuana' is illegal under federal law even if it is permitted under state law and thus as required under the Quality Housing and Work Responsibility Act of 1998 (QHWRA) O/A's can deny admission or occupancy to any household with a member who the owner determines is using a controlled substance e.g., marijuana.

Further, O/A's may not establish lease provisions or policies that permit occupancy by any member of a household who uses marijuana. O/A's must establish policies in their TSP and house rules which allow the termination of tenancy of any household with a member who is illegally using marijuana or whose use interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

3. Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity

HUD issued Notice H 2015-01 on February 6, 2015 requiring eligibility for housing that is assisted by HUD or subject to a mortgage insured by the FHA shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and no owner or administrator of HUD-assisted housing may inquire about the sexual orientation or gender identity of an applicant or occupant for purposes of determining eligibility. HUD further revises generally applicable definitions as follow:

(a) The term "Family" includes, but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity or marital status:

(1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or

(2) A group of persons residing together and such group includes, but is not limited to:

(i) A Family with or without children (a child who is temporarily away from home because of placement in foster care is considered a member of the family);

(ii) An elderly family;

(iii) A near-elderly family;

(iv) A disabled family;

(v) A displaced family; and

- (vi) The remaining member of a tenant family.
- (b) The term “gender identity” means actual or perceived gender-related characteristics.
- (c) The term “sexual orientation” means homosexuality, heterosexuality or bisexuality.

In addition, HUD made changes to 24 CFR part 200- Introduction to FHA Programs and 24 CFR part 203-Single Family Mortgage to incorporate:

- (a) The above definition of “Family”
- (b) The nondiscrimination requirement of Equal Access Rule in FHA programs.
- (c) The requirement that “marital status, actual or perceived sexual orientation or gender identity” may not be considered when determining the adequacy of the mortgagor’s income for single-family mortgage insurance.

HUD does not create an additional protected class under the Fair Housing Act or the civil rights law but housing discrimination based on sex may still be covered by the Fair Housing Act under the Equal Access Rule. HUD requires Owners to add such language to their TSP and House Rules.

4. Options for Waiting List Administration for Multifamily Housing properties

HUD Notice H 2014-16 issued on November 28, 2014/24 CFR Part 5 HUD Handbook 4350.3 REV.1, this notice gives guidance on the administration of waiting lists for Multifamily Housing Properties on the topics of opening the waiting list, placing applicants on the waiting list, and outreach. The notice does not mandate any new practices for owners/agents, but rather provides additional options for owners in their waiting list administration to further ensure fair housing compliance.

Application Intake

- Owners must accommodate persons with disabilities who cannot utilize the owner’s preferred application process, by providing alternative methods of application in-take (e.g. accepting mailed or on-line applications).

Opening the Waiting List

- The notifications should be extensive, and the rules for applying and the order in which the applications will be processed should be stated. Advertising and outreach activities must be done in accordance with the applicable fair housing marketing requirements or the HUD-approved Affirmative Fair Housing Marketing Plan. It must also comply with adopting suitable means to assure that the notice reaches eligible individuals with disabilities and those with limited English proficiency. Multifamily owners must ensure that notices of and communications during all meetings are provided in a manner that is effective for persons with hearing, vision, and other communications-related disabilities consistent with Section 504 of the Rehabilitation Act of 1973 (24 CFR 8.6), and, as applicable, the Americans with Disabilities Act.

Placing Applicants on the Waiting List

- If a lottery or other random choice technique is used to place applicants on the Waiting List, preferences the applicant qualifies for must be also noted on the

Waiting List. Selecting tenants from the Waiting List must be done in accordance with Chapter 4 HUD Handbook Rev.-1 including paragraph 4-15 A which requires that, once unit size and preference is determined, owners must select applicants from the Waiting List in chronological order to fill the vacancies.

Advertising

All advertisement must include the HUD-approved Equal Housing Opportunity logo, slogan or statement.

In addition, advertising depicting persons must depict members of all eligible protected classes including individuals from both majority and minority groups, including both sexes.