



Connecticut
Fair Housing Center

AFFIRMATIVELY FURTHERING

FAIR HOUSING:

GUIDE

A Guide for

Housing Providers

Connecticut Fair Housing Center, Inc.

is a statewide non-profit organization, working to ensure that all Connecticut residents have access to the housing of their choice free from discrimination.

The Center investigates claims of housing discrimination in violation of federal and state fair housing statutes; assists claimants in litigation and/or administrative enforcement actions and conducts testing to determine compliance with federal and state laws. The Center also provides fair housing education to organizations or professionals with a role in the housing market as well as to home-seekers. Because of the devastating impact foreclosures have had on communities of color, the Center works with homeowners in danger of losing their homes to foreclosure by holding classes on self-representation, assisting with mortgage modifications, and providing legal representation.

Table Of Contents

Introduction

Why do affordable housing providers need a guidebook on affirmatively furthering fair housing? 3

Affirmatively Furthering Fair Housing: The Obligation and Its Origins 3

Fair Housing Laws: An Overview 4

Affirmatively Furthering Fair Housing: Creating an Affirmative Fair Housing Marketing Plan (AFHMP) 5

Who is Least Likely to Apply? 6–8

Residency Preferences 8–9

Marketing to Those Least Likely to Apply 10–11

Affirmatively Furthering Fair Housing: Tenant Selection Policies 13

Waiting Lists 14

Tenant Selection Plan 15–17

Denials 17–18

Appendix 19

SUBSIDIZED MULTIFAMILY PROPERTIES

represent an important and valuable resource in addressing the nation's affordable housing needs. Ensuring that this housing is available to everyone depends on compliance with the state and federal government's mandate to affirmatively further fair housing by creating an affirmative fair housing marketing plan and tenant selections policies that ensure that everyone has an equal opportunity to obtain the housing.

DOES THE AFFIRMATIVELY FURTHERING OBLIGATION ONLY DEAL WITH RACIAL SEGREGATION?

No. Affirmatively furthering activities should be designed to reach any group protected under the state and federal Fair Housing Acts.

The federal Fair Housing Act prohibits discrimination on the basis of race, color, national origin, ancestry, religion, sex, familial status and disability.

In addition to the federally protected classes, the state Fair Housing Act prohibits discrimination based on marital status, sexual orientation, age, lawful source of income, and gender identity or expression.

Introduction

Why do housing providers need a guidebook on affirmatively furthering fair housing?

Connecticut is one of the most racially and economically segregated states in the country. This segregation is the result of a web of historic and contemporary government policies and private actions that have intentionally and unintentionally created barriers to equal housing access. Much can be done to reverse this legacy. The marketing and tenant selection policies of housing grantees in Connecticut can play a central role in encouraging diversity.

In 2013, the Center published a handbook for the recipients of HUD funding entitled “Affirmatively Furthering Fair Housing: A Guide for State and Federal Housing Grantees” (AFFH Handbook) that included best practices to “affirmatively further fair housing” (AFFH) including information on how to:

1. Find resources to update, create or localize an AI;
2. Create action steps to overcome the impediments to fair housing;
3. Document any fair housing action steps taken.

This handbook gives housing providers information on how to comply with the AFFH mandate by providing information on how to design and implement:

1. Affirmative Fair Housing Marketing Plans (AFHMP); and
2. Tenant Selection Policies and Procedures.

Subsidized housing providers in Connecticut should use this guide along with the HUD Handbook on Occupancy Requirements of Subsidized Multi-family Housing Programs, HUD regulations pertaining to fair housing, the State regulations on fair housing, and the State Housing Handbook.

Affirmatively Furthering Fair Housing: The Obligation and Its Origins

Virtually every housing program in Connecticut is under a federal or state obligation to affirmatively further fair housing.¹ HUD has found that the obligation to affirmatively further fair housing means that the entities implementing housing programs must counteract the historic and contemporary forces that created or currently perpetuate housing segregation.

In addition, every housing program carries with it an obligation to create and implement an AFHMP and tenant selection policies which comply with the fair housing laws.

The requirement to affirmatively market and implement nondiscriminatory tenant selection policies arises from the Fair Housing Act² (FHA) passed in 1968 to address the social harms of housing discrimination and segregated communities.³ Shortly after the passage of the FHA, HUD issued regulations requiring recipients of federal housing assistance to create Affirmative Fair Housing Marketing Plans (AFHMP).⁴ These regulations require participants in certain HUD programs to pursue an affirmative marketing policy. Developers, managers, and other housing providers must not only comply with the nondiscrimination laws but must promote their properties so as to ensure a diverse tenant population.

HUD’s AFHMP regulation further requires that each applicant “carry out an affirmative program to attract buyers or tenants . . . [which] shall typically involve publicizing to minority persons the availability of housing opportunities . . . through the type of media customarily utilized by the applicant, including minority publications or other minority outlets.”⁵ Program applicants subject to this rule must also submit AFHMP Plans to fulfill their marketing requirements.⁶

“It is the policy of the Department to administer its housing programs affirmatively, as to achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion, sex, handicap, familial status or national origin. Each applicant for participation in FHA subsidized and unsubsidized housing programs shall pursue affirmative fair housing marketing policies in soliciting buyers and tenants, in determining their eligibility, and in concluding sales and rental transactions.”⁷

¹ 42 USC §3608(e); Con.Gen.Stat. 8-37ee.

² Civil Rights Act of 1968, 42 U.S.C. 3601 et seq.

³ For more information about the history of the FHA, see the Center’s “Affirmatively Furthering Fair Housing Handbook.”

⁴ See 24 C.F.R. 200.600 et seq.

⁵ 24 C.F.R. 200.620.

⁶ 24 C.F.R. 200.625.

⁷ FN24 CFR 200.610.

An Overview of State and Federal Fair Housing Laws

The fair housing laws prohibit a wide range of discriminatory conduct in the housing sector.⁸

To determine how the fair housing laws apply to any situation, begin by asking three questions:

1. Is the person covered?
2. Is the property covered?
3. Is the behavior covered?

If the answer to all three questions is yes, then the fair housing laws apply.

1. Is the person covered?

The Federal FHA prohibits discrimination in housing and related services to any person on the basis of:

- race
- color
- national origin
- religion
- physical or mental disability
- sex and
- familial status, meaning families with children.

In addition, Connecticut law prohibits discrimination on the basis of:

- marital status
- sexual orientation
- age
- lawful source of income and
- gender identity or expression.

Housing providers operating in Connecticut must affirmatively further fair housing for all federal and state protected classes.

2. Is the property covered?

Fair housing laws apply to the sale, rental, insuring or financing of nearly all forms of residences. This includes:

- Apartments
- Single-family homes
- Mobile homes
- Nursing homes
- Homeless shelters
- Homeowners who are selling or renting property, and
- Vacant lots that will be used for housing.

Some properties are exempt from the law, but for purposes of affirmatively furthering fair housing those exemptions are not relevant.

3. Is the behavior covered?

The fair housing laws prohibit two types of conduct:

- **Ban on Differential Treatment:** It is illegal to treat someone differently, that is refuse to rent, sell, insure or finance housing, because of that person's membership in a protected class. Forms of differential treatment include:
 1. Refusing to rent or sell to someone because of their membership in a protected class.
 2. Having different terms or conditions for people in the protected classes than for everyone else.
 3. "Steering" people toward or away from housing because of membership in a protected class.
 4. Advertising in a discriminatory way or otherwise making discriminatory statements.
 5. Refusing to make reasonable accommodations in rules, policies or practices, or to make reasonable modifications for an individual with a disability is also considered differential treatment.
- **Ban on Disparate Impact (or differential effect):** A neutral rule which has a greater impact on people in the protected classes is illegal.

⁸ A one-page summary of the state and federal fair housing laws and statutory citations can be found in the appendix.

Creating an Affirmative Fair Housing Marketing Plan (AFHMP)

A. Who has to create an AFHMP—Federal Housing Programs

The AFHMP regulations require participants in certain HUD programs to *affirmatively* market their properties to ensure a diverse population of residents. AFHMPs are required for the following HUD programs:

- Section 221(d)(3) Below-Market Interest Rate (Section 221(d)(3) BMIR)
- Section 236
- Rental Assistance Payment (RAP)
- Rent Supplement
- Section 8 Project-Based Assistance:
 - New Construction
 - State Agency Financed (generally are New Construction or Substantial Rehabilitation projects)
 - Substantial Rehabilitation
 - Section 202 Projects with Section 8 Assistance (Section 202/8)
 - Rural Housing Section 515 Projects with Section 8 Assistance (RHS Section 515/8)
 - Loan Management Set-Aside (LMSA)
 - Property Disposition Set-Aside (PDSA)
- Section 202 with 162 Assistance—Project Assistance Contracts (Section 202 PACs)
- Section 202 with Project Rental Assistance Contracts (Section 202 PRACs)
- Section 202 without Assistance (Income Limits Only)
- Section 811 with Project Rental Assistance Contracts (Section 811 PRACs)

B. State Housing Programs

In Connecticut housing programs funded through the Department of Economic and Community Development (DECD) and the Connecticut Housing Finance Authority (CHFA) are legislatively mandated under Section 8-37ee of the Connecticut General Statutes and the Connecticut Fair Housing Act, 46a-64b *et seq.* to promote fair housing choice and racial and economic integration.

To document their Affirmative Fair Housing Marketing Plans, housing owners and developers are required to complete an AA-5⁹ which outlines marketing to an applicant pool that includes residents of municipalities of relatively high populations of those that would be “least likely to apply”. The state housing programs which are subject to these requirements include:

- Affordable Housing Program (AHP) also known as FLEX
- Home Investment Partnerships (HOME)
- Housing Trust Fund
- Rental Housing for the Elderly
- Congregate Housing for the Elderly
- Moderate Rental Housing (including Section 8 moderate rehab and MRD)
- Affordable (Low Income) Housing
- Limited Equity Cooperatives
- Mutual Housing

C. Differences between state and federal AFHMP

1. What to do if complex is funded by DECD and HUD

Both HUD and DECD have AFHMP forms which must be completed when either initially applying for funding from the agency or when the AFHMP is updated. HUD has adopted Form 935.2A¹⁰ while DECD uses form AA-5. DECD will accept the HUD 935.2A in lieu of the AA-5 in units funded by both DECD and HUD.

2. What to do if there is a conflict between HUD and DECD requirements

Although the HUD and DECD requirements are similar there is a potential for conflict. When this occurs, the HUD AFHMP Handbook¹¹ states:

“If state or local laws impose different nondiscrimination requirements than federal law, the more rigorous standard, the one that promotes the higher level of protection for the tenant, is controlling regardless of whether the more rigorous standard is that of the state, local, or federal law.”¹²

As a result, there will be times when complying with the federal regulations will not be sufficient. For example, housing providers in Connecticut are subject to the state housing discrimination laws which include protections based on marital status, sexual orientation, age, lawful source of income, and gender identity or expression. Even if the housing is federally funded, housing providers must market to members of both the federally protected classes and the state protected classes.

⁹ http://www.ct.gov/ecd/lib/ecd/fair_housing_action_plan_implementation_guidelines_for_housing_nov2012.pdf at p. 6.

¹⁰ <http://portal.hud.gov/hudportal/documents/huddoc?id=935-2a.pdf>

¹¹ <http://www.hud.gov/offices/adm/hudclips/handbooks/fheh/80251/index.cfm>

¹² *Id.* at p.

Creating an Affirmative Fair Housing Marketing Plan (AFHMP) (continued)

Marketing to those least likely to apply: A step-by-step approach

The AFHMP must be designed to market the housing to those “least likely to know about and apply for the housing in question” in the absence of additional outreach.¹³ To determine who is least likely to apply, the housing provider should consider whether there is a significant underrepresentation of any demographic group in the project and/or on its waiting list relative to the surrounding housing market area by looking at:

- the racial and ethnic composition of the residential area;
- whether exclusionary zoning, advertising, or site selection policies have resulted in segregation;
- language barriers; and
- income eligibility requirements.¹⁴

The **housing market area** for each property is the area from which a housing provider can “reasonably expect to draw a substantial number of its tenants.”¹⁵ If the immediate housing market area is not demographically diverse enough to draw applicants considered least likely to apply, an **expanded housing market area** should be used to increase the diversity of individuals reached by its marketing efforts.

HUD instructions provide that “If a housing market area is not demographically diverse...an expanded housing market area may be used. An expanded housing market area is a larger geographic area that may provide additional diversity.”¹⁶

Affirmative marketing efforts are successful if the applicant pool includes people from a wide geographic area, not just the town or county, who represent people in every protected class. Unsuccessful marketing efforts result in an applicant pool that is homogenous and from only one city or town.

1. Determine the demographics of the housing marketing area (Part 3a on HUD-935.2A and Section 3 of DECD AA-5)

Before creating the marketing plan, the housing provider must know who lives in the housing complex, the census tract in which the housing is located, the housing market area, and the expanded housing market area. Much of the demographic data needed for this section can be found in an entitlement community’s Analysis of Impediments to Fair Housing Choice, the State of Connecticut’s Analysis of Impediments to Fair Housing Choice¹⁷ or by consulting the following resources:

Resources for demographic research:

a. American Fact Finder: The U.S. Census Bureau’s website. Updated formatting should make this site more user-friendly beginning in January 2013. Available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>. To easily get data on the racial and ethnic composition of a town or county, go to the Census Bureau’s *Quick Facts* page at: <http://quickfacts.census.gov/qfd/states/09000.html#>.

b. Data Haven: A Connecticut non-profit data source that partners with other organizations to make Connecticut data accessible. Available at <http://www.ctdatahaven.org/>.

c. Diversity Data at Harvard University: Home to a wealth of data on demographics and topics like education, health, and crime, Diversity Data is an excellent resource for information by Metropolitan Statistical Area. Available at <http://diversitydata.sph.harvard.edu/>.

d. Connecticut Data Center: The State of Connecticut’s data center at the University of Connecticut. In addition to data, this site contains some excellent links to tips for finding data under the “How do I...” link. Available at <http://quickfacts.census.gov/qfd/states/09000.html#>.

e. Brown University – US2010: Provides data by town and region on various segregation levels over time. Available at <http://www.s4.brown.edu/us2010/>.

HUD and the State of Connecticut both use Worksheet 1, below, to record this data. The first column, “Project’s Residents” seeks information on the demographics of the current residents in the housing project. The second column, “Project’s Applicant Data” seeks the same information for those on the waiting list. If this is an *initial* AFHMP created before the project is occupied, then the first two columns should not be filled in.

¹³ *Id.*, Handbook at 4-1.

¹⁴ *Id.* at 2-8.

¹⁵ HUD instructs that an “Expanded Market Area” should be used “if the immediate housing market area is not demographically diverse enough to draw applicants considered least likely to apply for housing in this Project,” see Tip Sheet, available at <http://www.hud.gov/local/shared/working/r10/mj/afhmplsheet.pdf>. In addition, the instructions for HUD form 935.2A provide that “If a housing market area is not demographically diverse in terms of race, color, national origin, religion, sex, disability, or familial status, an expanded housing market area may be used. An expanded housing market area is a larger geographic area that may provide additional diversity.”

¹⁶ FN HUD 935.2A instructions.

¹⁷ The State of Connecticut anticipates publishing its newest Analysis of Impediments to Fair Housing Choice in the Spring of 2013. Much of the demographic data needed to update an AI or create an affirmative fair housing marketing plan should be contained in this document.

Worksheet 1: For New Housing Projects

Demographic Characteristics	Project's Residents	Project's Applicant Data	Census Tract	Housing Market Area	Expanded Housing Market Area
% White					
% Black or African-American					
% Hispanic or Latino					
% Asian					
% American Indian or Alaskan Native					
% Native Hawaiian or Other Pacific Islander					
% Persons with disabilities					
% Families with children					
Other (specify)					

If this is an AFHMP for an existing project, all columns must be completed.

Worksheet 1: For Existing Housing Projects

Demographic Characteristics	Project's Residents	Project's Applicant Data	Census Tract	Housing Market Area	Expanded Housing Market Area
% White					
% Black or African-American					
% Hispanic or Latino					
% Asian					
% American Indian or Alaskan Native					
% Native Hawaiian or Other Pacific Islander					
% Persons with disabilities					
% Families with children					
Other (specify)					

Creating an Affirmative Fair Housing Marketing Plan (AFHMP) (continued)

2. Determine who is least likely to apply

(Part 3b on HUD-935.2A and Section 4b of DECD AA-5)

To determine who is least likely to apply, compare groups across rows and within columns to identify any underrepresented groups relative to the surrounding housing marketing area. The following Worksheet identifies in

RED those least likely to apply. Groups most likely to apply have been identified in **GREEN**.

Demographic Characteristics	Project's Residents	Project's Applicant Data	Census Tract	Housing Market Area	Expanded Housing Market Area
% White	10%	10%	25%	45%	75%
% Black or African-American	55%	55%	50%	5%	15%
% Hispanic or Latino	25%	35%	25%	2%	2%
% Asian	0	0	0	0	0
% American Indian or Alaskan Native	0	0	0	0	0
% Native Hawaiian or Other Pacific Islander	0	0	0	0	0
% Persons with disabilities	10%	15%	25%	10%	25%
% Families with children	10%	25%	35%	35%	30%
Other (specify)					

In the example above there is an overrepresentation of both blacks and Latinos. Each group constitutes only a small portion of the housing market area and the expanded housing market area, yet constitutes the overwhelming majority of the project's residents and waiting list. Meanwhile whites constitute the majority of the housing market and expanded housing market areas, yet only constitute a handful of the project's residents and waiting list. The same pattern is apparent for persons with disabilities.

As a result, the worksheet reveals that in this case blacks and Latinos are *most* likely to apply while whites and persons with disabilities are least likely to apply. Furthermore because the expanded housing market area contains more demographic diversity, especially for whites and persons with disabilities, the housing provider should use the expanded housing marketing area.

Using your results from the worksheet fill in Section 3b of the HUD 935.2A (Section 4b of the AA-5) by checking off those groups that you found were "least likely to apply." The group must have some presence in the designated housing marketing area to be considered least likely to apply. For instance in the above example there are no native Hawaiian or other Pacific Islanders in the housing complex, census tract, housing market area or expanded housing market area. Therefore this group cannot be deemed least likely to apply. If the percentage of the group is less than 0, but still has an identifiable presence, include the percentage of that group. For example, in

some areas in Connecticut, the percentage of the population that is African-Americans is less than 0 but still an identifiable group because .59% of the population is African-American. African-Americans would be one of the groups least likely to apply.

Finally, many housing providers check off every group listed in Section 3b because they believe that they must market to all groups or they will discriminate. While it is true that marketing efforts should not exclude anyone, the AFHMP is designed to reach the groups who are unlikely to know about and apply for the housing in the absence of additional outreach. All other marketing efforts are designed to reach people most likely to apply.

3. Can the housing provider use a residency preference?

(Section 4a of the HUD 935.2A)

A residency *requirement* prohibits anyone who does not live or work in the city or town served by the housing provider from qualifying for the housing. A resident *requirement* is illegal and cannot be used.¹⁸

Residency *preferences* give applicants who live or work in the city or town served by the housing provider priority over nonresidents. Residency preferences are permitted only if the preference does not result in promoting segregation and does not violate equal opportunity requirements. HUD will

¹⁸ 24 CFR §5.665(c)(1).

deny a residency preference if it reinforces existing levels of segregation.¹⁹ A residency preference cannot be used for the purpose or effect of delaying or otherwise denying admission to a project or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.²⁰ In addition, owners may not base a residency preference on the length of time an applicant has lived or worked in the area. In situations where there are no eligible residents on the waiting list and the housing provider has a HUD-approved residency preference, owners cannot hold units open; owners must admit the next household on the waiting list.

Some housing providers state that they have a residency preference but deny applications to people who do not live or work in the jurisdiction served by the housing provider. For example, a housing authority states that it has a residency preference for the people living in the town. However, when someone from outside the town calls to request an application, she is told that since she does not live in the town, she cannot get an application. In this case, a residency preference is being used as a residency requirement since

the caller cannot get an application because she does not live in the town. Such a requirement is illegal under both state and federal laws.

Housing providers wishing to use a residency preference must fill out Section 4a of HUD Form 935.2A. Section 4a asks for information about the geographic area for the residency preference, the reason for the residency preference and plans for evaluating whether the residency preference violates the non-discrimination and equal opportunity requirement of 24 CFR §5.105(c)(1).

In addition to completing this section, applicants are also required to complete Worksheet 2. This worksheet asks for the same demographic information as that required by Worksheet 1 and is used to determine whether or not the residency preference will have a greater impact on people in the protected classes.

HUD is likely to turn down a residency preference if the demographics of the project and the housing market areas look like this:

Worksheet 2: Requesting a Residency Preference					
Demographic Characteristics	Project's Residents (as determined in Worksheet 1)	Project's Applicant Data (as determined in Worksheet 1)	Census Tract (as determined in Worksheet 1)	Housing Market Area (as determined in Worksheet 1)	Expanded Housing Market Area (as determined in Worksheet 1)
% White	70%	70%	80%	85%	65%
% Black or African-American	15%	20%	10%	5%	25%
% Hispanic or Latino	15%	10%	10%	10%	10%
% Asian	0	0	0	0	0
% American Indian or Alaskan Native	0	0	0	0	0
% Native Hawaiian or Other Pacific Islander	0	0	0	0	0
% Persons with disabilities	2%	45%	17%	17%	25%
% Families with children	0	0	35%	45%	55%
Other (specify)					

In this case, a residency preference would have the effect of excluding more African-Americans and Latinos than whites because the housing market area and the expanded housing market area are overwhelmingly white. Therefore, a residency preference would not be in accordance with the non-discrimination and equal opportunity requirements of the fair housing laws.²¹

In Connecticut choosing residents for a complex is strictly regulated. Residency requirements are not permitted in state subsidized housing. Residency preferences are permitted only in limited circumstances if a point system is used and equal points are given to applicants who are least likely to apply.²² For more information on how to choose residents for a state-funded housing project, see below at p. 13.

¹⁹ AFHMP Handbook at 2-16, 2-17.

²⁰ For Section 8 multifamily properties, the residency preference approval must be done through a modification to the AFHMP in accordance with 24 CFR 108.25.

²¹ Cf. *Raso v. Lago*, 958 F. Supp. 686 (D. Mass. 1997).

²² Conn. Agencies Regs. §8-27ee-305.

Creating an Affirmative Fair Housing Marketing Plan (AFHMP) (continued)

4. Marketing to those least likely to apply

(Section 4b of the HUD 935.2A and Section 5 of the AA-5)

The goal of an AFHMP is to successfully attract those that are least likely to apply to new areas to create diverse integrated communities. Evidence suggests that households that are relocating make their decision on where to live on the basis of information concerning the new community's housing.²³ To ensure a diverse applicant pool, a housing provider must ensure that information about new housing opportunities reach those least likely to apply. This can be accomplished using both traditional and non-traditional marketing tools.

Advertising to Community Contacts

(Section 4b of the HUD 935.2a and Section 5A of the AA-5)

The HUD 935.2A includes Worksheet 3: Proposed Marketing Activities which asks the housing provider to identify at least one community organization that serves each group deemed least likely to apply. These groups will assist the housing provider with its marketing. Include the name of a contact person along with their address and information about their experience working with target population on Worksheet 3. Before listing the individual, contact the organization to ensure that the group still exists and the person still works there. The housing provider should also note the language in which materials will be provided as well as any alternative formats that may be utilized.

In addition to listing the group on Worksheet 3, contact the community group by letter²⁴, email, flyer, or brochure to advertise the opening of the waiting list or that applications are being accepted. Include the following in any materials sent to the community group:

- A description of the housing, e.g. new townhouses, 1-bedroom garden-style apartments, etc.
- A list of qualifications such as "households with incomes between \$0 and \$15,000 per year";
- The dates and times during which applications will be accepted;
- The name, address, telephone number, and email address of the person responsible for distributing and accepting applications;
- A copy of the application if possible. Where this is not possible, the materials should provide detailed information on how to obtain an application;
- Instructions on how to request a reasonable accommodation if one is needed to assist in completing an application.

Comments about tenant qualifications should be neutral listing basic eligibility criteria and should avoid language that would discourage anyone from applying. The fair housing logo should appear on all marketing materials to communicate to prospective applicants that all are welcome and encouraged to apply.

Ask the community contact to post the letter, place a notice in the group's newsletter, or otherwise assist in advertising the availability of the housing. At a minimum, request that the notice is posted in a readily accessible area so that the marketing materials actually reach the target audience.

In addition, housing providers can do the following to ensure a diverse group of applicants:

- Sponsor visits to the new community for prospective residents so they have the opportunity to familiarize themselves firsthand with the new neighborhood.
- Ally with the local business community for marketing especially at workplaces with a diverse group of employees who work in the community, but cannot afford to live in it.²⁵
- Engage local community members so they can address the concerns of prospective residents pertaining to resources in the neighborhood as well as the overall inclusionary environment.²⁶
- Post application materials at local farmers' markets, fairs or other community events where people from the groups least likely to apply might go.
- Send materials to a PTO or other parent-teacher organization in communities where there are high numbers of those least likely to apply.
- Post notice of the waiting list opening and how to obtain an application on the 211/Infoline website.
- Marketing that includes flyers or pamphlets at daycare, senior, and recreation centers and flyers on local grocery store boards and other venues.
- Advertising in multiple languages where needed.
- Post advertisements and materials in houses of worship.

²³ Much of this evidence derives from case studies conducted in the context of The Hope VI program. Hope VI entailed a plan developed by HUD to rebuild the most physically impoverished public housing developments across the country. In order to facilitate this extensive work, current residents are moved to other buildings within their development, relocated to public housing elsewhere or provided with housing assistance vouchers. The program thus provided a rare opportunity to glean insights into the decision making process families employed when determining whether to move to another public housing unit or a private residential unit. See e.g. Susan Clampet-Lundquist, *HOPE VI Relocation: Moving to New Neighborhoods and Building New Ties*, 15 Housing Policy Debate 415 (2004).

²⁴ A sample community contact letter is contained in the appendix.

²⁵ *Id.* at 21.

²⁶ "The literature on housing choice voucher programs indicates that both actual and perceived discrimination can play a key role in an individual's decision of whether to move to an unfamiliar neighborhood..." *Id.* at 16. In offering supporting evidence of this phenomenon, the report, in part, pointed to the results of qualitative studies orchestrated in the context of Section 8 programs which found that participants restricted their search to African American neighborhoods because they assumed they would not be welcome in predominantly white communities. Susan J. Popkin & Mary K. Cunningham, Urban Institute, *CHAC Section 8 Program: Barriers to Successful Leasing Up* 23(1999).

Advertising in the media

(Section 4c of the HUD-935.2A and Section 5b of the AA-5)

In Section 4c of HUD Form 935.2A, the housing provider is required to use Worksheet 4 to describe their media campaign. For each targeted population, the housing provider should provide not only the means of advertising that will be used to reach that group but the reason for choosing this media outlet. The housing provider should also note the language in which materials will be provided as well as any alternative formats that may be utilized. Advertisements should include the fair housing logo or statement. Finally, if the advertisement uses human models, it must include models of majority and minority groups as well as both men and women.

Housing providers should also consider using the following media strategies to reach a diverse population:

- Marketing that includes local transportation advertising (including buses as well as trains), local newsletters and circulars, radio ads.
- Materials that describe the location and nearby amenities such as parks, rec centers, restaurants, bus routes, amenities within walking distance, shopping, etc.
- Outreach through neighborhood events. Property managers can attend events in other localities to distribute marketing materials, and hold events at the property which are advertised to community groups and in other neighborhoods.

Notice of compliance with the fair housing laws

The housing provider must display a fair housing poster in all areas where sales or rental activity takes place.²⁷ This poster should include information on both state and federal fair housing laws. The AFHMP must be readily available for inspection at all rental and sales offices. Copies must be presented to anyone who requests them whether it be an applicant, tenant, reporter, or any member of the general public. Lastly whenever a project site sign is utilized it must have the HUD equal opportunity logo.²⁸ A picture of the site sign should also be included in the AFHMP.

5. Evaluating marketing activities

Both the HUD 935.2A and the AA-5 require housing providers to create a process to evaluate whether the marketing activities have been successful in attracting applicants who are least likely to apply. Comparing the number of units now occupied by persons who are least likely to apply and the number of people least likely to apply on the waiting list both before and after the marketing process is a good place to begin the evaluation. Recording information on how the applicant heard about the housing and why they decided to apply will assist in evaluating the marketing plan.

For housing providers with state funding, Connecticut regulations require that at least twenty percent (20%) of the units be marketed to the groups identified as least likely to apply.²⁹

This threshold serves as a benchmark from which to evaluate the marketing plan regardless of the source of funding. An AFHMP is successful if twenty percent of persons in the units and twenty percent of persons on the waiting list are members of the groups least likely to apply. If the resident population or the waiting do not reflect these numbers, the housing provider should consider other strategies to increase the efficacy of the AFHMP. If after using the AFHMP there are an insufficient number of people least likely to apply in the housing or on the waiting list, the housing provider must begin marketing activities again.

6. Train staff on the AFHMP and fair housing laws

Housing providers should train all staff involved in marketing on how to use the AFHMP as well as including instructions on how to use the AFHMP in any employee manual. Train staff when the AFHMP changes or every two years and include the name of the trainer in the AFHMP materials. Whenever new staff is hired, train them on how to use the AFHMP immediately.

HUD and DECD also recommend fair housing training at least every 2 years. In addition to providing a narrative containing the details of training include the dates of such sessions and copies of fair housing materials.

7. Common AFHMP mistakes

A housing provider cannot begin marketing or lease-up until the AFHMP plan has been approved by HUD. Some common mistakes which could result in a delay in the approval of the AFHMP include:

Incomplete project information

- No information on number of units covered by the AFHMP
- No information on the price of units
- No census tract identified
- No identification of the marketing area or expanded marketing area

Type of Affirmative Marketing Plan is Unclear

- Failure to indicate whether this is an initial AFHMP or an updated AFHMP

Inadequate Direction of Marketing Activities

- All groups checked off making it clear there has been no analysis of groups "least likely to apply"
- No marketing to people with disabilities for family housing units

²⁷ 24 CFR 200.620(e).

²⁸ For copies of the fair housing logo in multiple sizes and formats, go to <http://portal.hud.gov/hudportal/HUD?src=/library/bookshelf11/hudgraphics/fheologo>

²⁹ Conn. Agencies Regs. §8-37ee-2(a).

Creating an Affirmative Fair Housing Marketing Plan (AFHMP) (continued)

Inadequate Marketing Program

- Failure to use multiple types of media
- Failure to advertise in the places used by people least likely to apply

Problems with Brochures, Signs, and Fair Housing Poster

- No posting of state protected classes³⁰
- Failure to submit brochures, leaflets or other handouts

Problems with Community Contacts

- Failure to provide current information about the community contacts
 - E.g., the group or organization has gone out of business or no longer exists
- Community group or community contact fails to post information about the opening of the waiting list
- Lack of follow-up with the community group or contact to ensure that the housing opportunity has been advertised
- No information on the contact's identification with a group
 - Makes it unclear why this community group is a relevant contact

Evaluation of Marketing Activity

- Failure to indicate the standards used to ensure that marketing was effective

Experience and Staff Instructions

- No staff listed who will be responsible for marketing activities
- Lack of staff training on AFHMP or fair housing laws
- Instructions to staff do not include state protected classes
- Training provided staff was many years ago

³⁰ <http://ctfairhousing.org/what-we-do/fair-housing-education-for-housing-providers/>

Tenant Selection Policies

Some General Concepts

Housing providers must comply with fair housing and landlord/tenant laws put in place by federal, state, and local governments as well as the requirements of the state or federal housing program being administered. An overview of the fair housing laws have been included at p. 4. The federal tenant selection policies can be found for each federal housing program can be found by searching www.hud.gov. The tenant selection policies for state housing programs can be found at Conn. Agencies Regs. §8-37eff and in the state housing handbook found at www.decd.org. Refer to these as well as this Handbook when creating a Tenant Selection Policy. This section of the Handbook is designed to give advice on how to create a tenant selection policy for applicants who meet the eligibility criteria for the housing assistance program.

Reasonable Accommodations

All owners, housing providers, management companies, etc. must make reasonable accommodations to a person's disability if needed to allow that person to apply for or qualify for housing. A **reasonable accommodation** is a change in rules, policies or practices. For example, a housing provider may require applicants to come into the office to obtain a housing application. However, people who are disabled may have difficulty getting transportation to get into the office. A reasonable accommodation would be to mail an application to the person who is disabled. In addition, a housing provider may have to waive certain qualifications if a person is disabled. For example, many landlords examine rent paying history to determine if the applicant has paid rent on time. However, the person who is disabled may pay rent late because he receives his disability check on the 20th of the month and not on the first. A reasonable accommodation would include waiving the on-time payment qualification for this applicant.

The law does not require the housing provider to take any action that would result in a fundamental alteration in the nature of the program. For example, a landlord would not be required to provide health care services or transportation to a person with disabilities if those services are not offered to other tenants. Such services would be considered a fundamental alteration to the program. In addition, housing providers are not required to take any action that would result in an undue financial or administrative burden. An applicant who asks not to pay rent because he is disabled would be an undue financial burden unless the housing provider was administering a program in which the tenant rent was subsidized 100%.³¹

A prospective tenant does not have to disclose a disability³² unless he or she is seeking a reasonable accommodation or modification. If the applicant discloses a disability, the landlord may then ask follow-up questions but only to the extent necessary to determine the reasonableness of a particular accommodation.

The housing provider must be careful to ask the same questions and apply the same screening criteria to all potential tenants and ensure that the questions asked do not have the effect of probing for information that relates to a disability. For example, the housing provider may not ask whether a person is capable of living independently. Generally, it is illegal for landlords to ask:

- Whether an applicant has a disability;
- Whether an applicant has a particular type of disability;
- Questions about an applicant's disability, including its severity;
- Any question, such as "Do you take any medications?" that would require an applicant to reveal information about his or her disability;
- Whether any member of the applicant's family or any friend or associate has a disability; and
- Whether the applicant has the ability to live independently or evacuate safely.

Reconciling state and federal law conflicts

Occasionally state and federal law conflict. For example, in Connecticut it is illegal to discriminate against a tenant on the basis of marital status, sexual orientation, age, lawful source of income, gender identity or expression. Housing providers in Connecticut must include the state protected classes in their non-discrimination materials. A housing provider must use the standard that promotes the higher level of protection for the tenant when deciding among conflicting laws.

"If state or local laws impose different nondiscrimination requirements than federal law, the more rigorous standard, the one that promotes the higher level of protection for the tenant, is controlling regardless of whether the more rigorous standard is that of the state, local, or federal law."

Opening, closing and purging the waiting list

The tenant selection plan must be in writing and should describe when an applicant's name is placed on the waiting list, the qualifications for the housing, how applicants are chosen from the waiting list and when someone is removed from the waiting list.

³¹ For more information on reasonable accommodations see, Joint Statement of HUD and the Department of Justice Regarding Reasonable Accommodations, <http://www.fairhousing.com/include/media/pdf/finaljointstatement051704.pdf>

³² A housing provider is only permitted to ask for proof of a disability if the housing is designated for people with disabilities. In such a case, the housing provider can request the documentation set out in the HUD handbook or Connecticut regulations. It is never permissible to ask the tenant or applicant to turn over medical records, sign a medical release, or give the housing provider permission to speak with the tenant or applicant's doctor.

Tenant Selection Policies (continued)

a. Opening the waiting list

A housing provider is required to use the AFHMP to market the opening of a waiting list and the marketing must begin at least 90 days prior to the date applications will be taken. Once an application is received the following information should be entered into the database used to maintain the waiting list or the list of applicants who may be eligible for housing if there is no waiting list:

- Date and time the applicant submitted an application
- Name of head of household
- Annual income amount
- Need for an accessible unit (if any)
- Preference status (if permitted by HUD)
- Unit size.³³

State and federal regulations require housing providers to record the race/ethnicity, gender, and family size of applicants for statistical purposes. However, this information should not be included in the waiting list database because these criteria can serve as the basis for discriminatory treatment in violation of the fair housing laws.

Federal law permits the use of a first come-first serve waiting list although this can result in discriminatory treatment against people with disabilities. In a situation where the waiting list is open for two hours and applicants are accepted on a first time-first served basis, people with disabilities are at a great disadvantage. While people without disabilities may be able to go to the housing office and wait for several hours for it to open so they can be first on the waiting list, people with disabilities may be physically unable to wait for long periods of time or may be dependent on others for transportation. Requiring applicants to call in during a certain time period may also create problems for people with disabilities. A person who is deaf or hard of hearing may not have anyone who can call for them during the time period. Alternatively, having a relay operator make numerous calls to get through when other applicants are not on the phone is impractical.

Where there is more than one waiting list, it is permissible for an applicant to appear on more than one.

b. Closing the waiting list

If the average wait for a unit is a year or more³⁴ and there are an adequate number of people least likely to apply at or near the top of the waiting list,³⁵ the waiting list can be closed. When closing the waiting list, however, the housing provider must use the AFHMP to notify community groups and those least likely to apply that the waiting list is closing. The notice must state the reason the waiting list is closing.

When reopening a closed waiting list, the housing provider must use the AFHMP to market the opening.

Opening a Waiting List – Best Practices

1. Use the AFHMP to advertise the opening of the waiting list or the availability of applications for housing.
2. Ensure that all materials advertising the opening of the waiting list or the availability of applications also includes information about how to request a reasonable accommodation.
3. Allow applicants to pick up applications or have applications mailed to them for several days, not just one day or a few hours.
4. Set a definite time period for the acceptance of applications. For example, accept applications postmarked February 1–February 5. By accepting applications by mail, no group protected from discrimination is at a disadvantage.
5. Once the time for receipt of applications closes, use the housing providers tenant screening criteria to place applicants on the waiting list or send a denial letter to those who do not qualify.

c. Purging the waiting list

The waiting list should be updated regularly to minimize the number of people on the list who are uninterested or ineligible. To facilitate this process, the tenant selection plan must state when and how applicant names may be purged from the waiting list. Before purging a waiting list, send a mailing to everyone on the waiting list asking the applicant to confirm current contact information and interest in staying on the waiting list. The update request should provide a deadline by which the applicant must respond and clearly explain what will happen if no response is received. If no response is received, the applicant should be removed from the waiting list. However, the notice that was sent as well as the date of the removal should be carefully documented to prevent any disputes.

When determining whether or not to conduct a purge, a housing provider should consider:

- **The length of time applicants remain on the waiting list.** If the waiting list is long, applicants may drop off because their circumstances change. By purging the waiting list, the housing provider is able to remove people who are no longer interested.
- **How many households must be considered to find one that is eligible for the housing.** If many people whose names come up on the waiting list are ineligible or unresponsive, purging the waiting list may result in a higher number of eligible applicants on the list.
- **Whether the list includes a sufficient number of applicants who are least likely to apply.** If the list is not composed of at least 20% of those groups least likely to apply, it may be appropriate to purge the list of people who are no longer interested in order to include new applicants who are part of a group that is least likely to apply.

³³ HUD Occupancy Handbook, 4-35 (2009) available at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35647.pdf.

³⁴ HUD Occupancy Handbook, p. 4-33 http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35647.pdf

³⁵ Conn. Agencies Regs. §8 37ee 314.

Tenant Selection Plan

To determine who will live in the housing, housing providers must develop and make public written tenant selection policies and procedures that include descriptions of the eligibility requirements for admission. In addition to other eligibility requirements, the Tenant Selection Plan must state whether there are any restrictions or preferences in the admission of tenants. Assistance must be provided to anyone requesting help completing the application form. Finally, the most important screening criteria is consistency. Many housing providers are inconsistent in their use of their tenant screening criteria. For example, if the housing provider determines that tenants who have been evicted from previous apartments are not eligible, this criteria should be applied to all applicants who apply unless the tenant requests a reasonable accommodation or the tenant selection policies provide for a waiver of this criteria in specified circumstances.

Occupancy Standards

The Tenant Selection Plan should include the number of people permitted to live in a unit. This is usually called an occupancy standard. Some housing providers limit the number of people who can live in a unit to two people per bedroom. However, limiting the number of people who can live in a unit can have a disparate impact on families with children. In a recent case decided by the Connecticut Federal District Court, *Gashi v. Grubb and Ellis, et al.*,³⁶ the Court held that a two-person per bedroom rule had a disparate impact on families with children because it limited the number of units available to families with children without having a business justification.

To determine how many people can occupy a unit, begin by looking at the local housing or building code in which the housing is located. If this uses a restrictive 2 people per bedroom rule, use the state building code which permits 150 square feet for one person and 100 square feet for each additional person. To determine how many people can share a bedroom, the room must be at least 70 square feet if one person is going to sleep there. If more than one person is going to sleep there, there must be 50 square feet per person.

Elderly/Disabled Housing and families with children

In 1999, Congress passed the Housing for Older Persons Act which permitted some properties to exclude children if the properties met one of two criteria:

1. Occupied by persons 62 years of age or older; or
2. Intended and operated for occupancy by persons 55 years of age or older, and—
 - (i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy.³⁷

Properties in which all persons are over 62 or 80% of the units were occupied by someone who was over 55 are permitted to refuse to rent to families with children and can refuse to permit current residents to allow children to move in with them.

However, federally subsidized housing providers are never permitted to exclude children from their housing. As stated in the Federal Register:

*... no public housing development funded by HUD may exclude families with children, even if at least 80% of the units are occupied by at least one person who is 55 years of age or older.*³⁸

Screening for Credit History

The purpose of reviewing an applicant's credit history is to determine how well applicants meet their financial obligations. It is permissible to reject an applicant for a poor credit history, but a lack of credit history is not sufficient grounds to reject an applicant. However, many low-income people have a poor credit history because they are unable to pay bills, not because they are unwilling. When assessing credit history, keep in mind that the applicant is likely to pay less in rent in the new housing than in current housing making it more likely that the tenant will meet her financial obligations. Finally, applicants with bad credit history related to a disability may be entitled to a reasonable accommodation of a waiver of the bad credit history.

If a tenant is rejected for poor credit history then the housing provider should notify tenant of the specific reason for rejection.³⁹ This notice should be accompanied by referral to a counseling service that can aid with credit repair.

Minimum Income Requirements

Every state and federal housing program has income criteria which an applicant must meet to qualify for an apartment. If the applicant's income exceeds the income limit, they are ineligible for the housing. The Section 8 rental voucher program, Connecticut's Rental Assistance Program (RAP), and other rent supplement programs do not allow housing providers to establish a minimum income requirement for applicants. So long as the applicant has enough income to pay the rent and any utilities not included in the rent, their income qualifies them for the housing. The Section 236 and Section 221(d) (3) BMIR federal housing programs do permit housing providers to screen applicants who receive no other form of assistance for their ability to pay the Section 236 basic rent or the BMIR rent.

³⁶ 801 F.Supp. 2nd 12 (D.Conn. 2011).

³⁷ 42 USC §3607(a)(2).

³⁸ Federal Register, Vol. 64, No. 63 (Friday, April 2, 1999) at 16327.

³⁹ If a credit reporting service is used to check credit, the applicant must be given a written notice that includes the name of the credit reporting agency, a copy of the credit report, and information on how to dispute the contents of the credit report.

Tenant Selection Policies (continued)

Bad Rental History

The goal of screening for rental history is to ascertain whether applicants have the ability to meet the requirements of tenancy. Housing providers must not reject an applicant for lack of a rental history but may reject an applicant for a poor rental history. Poor rental history can include evictions for disturbing the neighbors, illegal activity in a unit, or damage to an apartment.

Housekeeping habits that affect the health or safety of others

Owners may visit the applicant's current dwelling to assess housekeeping habits for safety and health hazards. However, if the housing provider determines that home visits are necessary, it must visit the homes of all applicants. Inspecting units of applicants who live in a small geographic area or who live in a particular town can have a disparate impact on people in the protected classes and can be illegal. In addition, the tenant screening criteria should include reasonable standards which can be consistently applied to all families.

Disqualifications Due to Criminal Records & Conduct

There are a number of criminal convictions and conduct that disqualify an applicant:

- Criminal activity of a current household member that threatens the health, safety, and right to peaceful enjoyment of the property by other residents or the owner and their agents.
- Prior conviction of a current household member for drug-related criminal activity for the production or manufacture of illegal drugs.
- A household in which any member is currently engaged in illegal use of drugs.
- A current household member is subject to a lifetime registration requirement under a state sex offender registration program.

Owners should take into account a number of factors when considering whether or not to disqualify an applicant on the basis of a criminal record or other conduct that may raise a concern to the health and safety of others. Waivers of admissions standards could be appropriate where the conviction can be attributed to a disability, or is related to domestic violence perpetrated against the applicant.

When determining whether or not to disqualify a candidate, the owner should consider how long ago the offense occurred and whether the offense is relevant to the safety of other residents or the property. Other mitigating factors, such as age at the time of the offense and evidence of rehabilitation such as employment, training and education, or letters of support should all be taken into account. Records other than adult *conviction* records (not arrest records) cannot be used to determine eligibility.

Illegal tenant screening policies

Although there are many permissible tenant screening policies, there are some criteria which cannot be used because they violate the fair housing laws. Examples include:

- Requiring the applicant be a U.S. citizen as opposed to someone who is in the country legally;
- Working families;
- Requiring medical evaluation or treatment or proof of the ability to live independently;
- Requiring the tenant to take advantage of meals and other services when offered;
- Requiring a donation or contribution other than rent;
- Mandating assistance with building or rehabbing the housing;
- Inquiring about disability status;
- Residency requirements;
- Residency preference where such a preference would reinforce segregatory patterns.

Tenant Selection

Generally there are three approaches to selecting tenants for residency:

1. First come–first served
2. Lottery
3. Point System

First come first served: Connecticut state regulations prohibit ordering a waiting list on a first come–first served basis at any time.

First come–first served can only be used for federally subsidized housing. When using this method, all applications must be date and time stamped upon receipt. If the housing provider has no HUD-approved priorities, applicants are placed on the waiting list in the order in which the application was received.

Ordering a waiting list with priorities is more complicated because the housing provider must first sort the applications into priority areas and then order them by date and time received. For example, a housing provider has three HUD-approved priorities: 1) homeless households; 2) households displaced by natural disaster; 3) households paying more than 50% of their income in rent. The first application received for the first priority area would be given first place on the waiting list. This ordering would continue until all of

the applications for the first priority area are placed on the waiting list. The next applicant placed on the waiting list is the first household returning its application that was displaced by a natural disaster. This ordering system would continue until all of the priority applications are placed on the waiting list. The remaining applications that have no priority are then placed on the waiting list in accordance with the date and time they were received.

Lottery: In Connecticut there are only two available options for tenant selection: a lottery or a point system. When using a lottery for state subsidized housing, a housing provider should:

1. Determine the income eligibility of all applicants;
2. Pre-screen/interview for credit worthiness and other reasonable common rental or ownership criteria; and for verification of applicant information;
3. Put all applicants with favorable interviews, that is, having no ground for disqualification in the pool and choose by a lottery system.

The lottery method of tenant selection can be used for federally subsidized housing both when there are HUD-approved preferences and when there are no HUD-approved preferences. If using preferences, sort applications by preference. Within each preference assign places on the waiting list randomly, then place applications with no preference onto the waiting list randomly. If there are no preferences, place applicants on the list randomly.

Many housing providers administering state subsidized housing use the lottery method when a waiting list is first opened. Subsequent applicants are then placed at the end of the waiting list on a first come first served basis. This violates Connecticut law. If a waiting list remains open, the housing provider should place new applicants on the waiting list by using a lottery. For example, a housing provider opens its waiting list and receives 25 applications in a one month period. The housing provider performs a lottery and places the applicants on the list in order from 1–25. The next month, another 15 applications are received. At the end of that month, the housing provider performs a lottery *with the new applications* and places these new applications on the waiting list from 26–40.

Point system: Connecticut regulations⁴⁰ also permit placing people on a waiting list through a point system. The regulatory framework provides the maximum number of points allowed for certain permissible criteria including the person’s former or current living situation, their rent to income ratio, and whether they are considered “least likely to apply”. The number of points awarded cannot be changed unless permitted by DECD. When using a residency preference, these regulations mandate that an equal number of points be awarded to those “least likely to apply” as to the applicant with a residency preference.

State regulations provide that the applicant receives the full point score or none and establishes the following framework:

(i) Substandard Housing	25 point maximum
(ii) Living situation	25 point maximum
(iii) Income to rent ratio	15 point maximum
(iv) (OPTIONAL) Resident or Least likely to apply	10 points

The housing provider calculates the number of points for each applicant and orders the list according to the number of points assigned. If there is a tie score under the point system method and there is a limited number of units available for persons with the same point score, the random selection method or first come–first served (chronological order) shall be used in conjunction with the point system to select which applicant gets the unit.

Unit Transfers

Policies governing unit transfers must be written and incorporated into the tenant selection policy. The written policy should state:

- Acceptable reasons a tenant will be granted a transfer;
- Procedures for filling vacancies;
- Policies for establishing priorities for filling vacant units with either tenants awaiting transfers or applicants from the property waiting list; and
- A statement that tenants requesting reasonable accommodations will be granted priority over tenants requesting a transfer for other reasons.

Denials

When an application is denied, the rejection notice must be in writing. The written rejection notice must include:

- The reason(s) for the rejection;
- The applicant’s right to respond to the owner in writing or request a meeting within 14 days (or for state subsidized housing, 10 business days) to dispute the rejection.

When any application for tenancy is denied, the denial letter should indicate that an opportunity to request a reasonable accommodation is available if the applicant believes it would enable him or her to meet the terms of the lease. If an applicant’s request for a reasonable accommodation is denied, the applicant should be told the reason for the denial and given an opportunity to respond.

In responding, the applicant could point out that the reason given for the denial is actually the result of the disability. They could also indicate that there has been a change or the implementation of plan that will enable the applicant to be a good resident. Any one of these outcomes, if applicable, is grounds for reconsideration.

⁴⁰ Conn. Agency Regs §8-37ee-305.

Tenant Selection Policies (continued)

Persons with disabilities have the right to request reasonable accommodations to participate in the informal hearing process.

Reasons to overturn a denial

Any meeting with the applicant to discuss the applicant's rejection must be conducted by a member of the owner's staff who was not involved in the initial decision to deny admission or assistance. Within 5 business days of the owner response or meeting, the owner must advise the applicant in writing of the final decision on eligibility.

Some reasons to overturn a denial include:

- Reasonable accommodations to waive past behavior;
- Reason for disqualification was outside of the household's control;
- Change in circumstances that would ensure that disqualifying behavior will not recur;
- Reasons for disqualification was the result of domestic violence;
- Any other information which shows that the reason for denial is not likely to recur

Appendix

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Fair Housing Summary
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Sample Community Contact Letter
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Conn.Reg. 8-37ee
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Illegal Housing Discrimination – A Summary

Protected Classes	Federal or Connecticut Law	Property not covered ¹	Remedy
Race	Federal: 42 U.S.C. §1982 (Civil Rights Act of 1866)	None	Federal court
	State: Con.Gen.Stat. 46a-58a	None	State court or CHRO ²
Race, Color, National Origin, Ancestry, Sex, Religion	Federal: 42 U.S.C. §3604	Federal: Owner occupied buildings with 4 units or less; single family homes	Federal court or HUD ³
	State: Con.Gen.Stat. 46a-64c	State: Owner occupied buildings with 2 units or less; owner occupied rooming house	State court or CHRO
Familial Status or the presence of children	Federal: 42 U.S.C. §3604	Federal: Owner occupied buildings with 4 units or less; single family homes	Federal court or HUD
	State: Con.Gen.Stat. 46a-64c	State: Owner occupied 4 units or less; elderly housing	State court or CHRO
Disability	42 U.S.C. §3604	Federal: Owner occupied buildings with 4 units or less; single family homes	Federal Court or HUD
	29 U.S.C. §794	Federal: All housing not receiving federal money	Federal court
	State: Con.Gen.Stat. 46a-64c	State: Owner occupied buildings with 2 units or less; owner occupied rooming house	State court or CHRO
Marital Status (except an unmarried unrelated man and woman)	State: Con.Gen.Stat. 46a-64c	State: Owner occupied buildings with 2 units or less; owner occupied rooming house	State court or CHRO
Sexual Orientation	State: Con.Gen.Stat. 46a-81e	State: Owner occupied buildings with 4 units or less	State court or CHRO
Age (except minors)	State: Con.Gen.Stat. 46a-64c	State: Owner occupied buildings with 2 units or less; owner occupied rooming house; elderly housing	State court or CHRO
Lawful source of income	State: Con.Gen.Stat. 46a-64c	State: Owner occupied buildings with 2 units or less; owner occupied rooming house	State court or CHRO
Gender identity or expression	State: Con.Gen.Stat. 46a-64c	State: Owner occupied buildings with 2 units or less; owner occupied rooming house	State court or CHRO

- It is illegal to refuse to rent or sell property, to discriminate in the terms or conditions of a rental or sale (for example, to charge different amounts), to steer, to discriminate in mortgage lending or other related practices, or to otherwise make housing unavailable because someone is a member of a protected class.
- All persons involved in any real estate transaction must make reasonable accommodations for persons with mental or physical handicaps.
- It is illegal, with some exceptions, to advertise in a discriminatory manner.

¹ The exemptions from the law are complicated, and properties which are listed as exempt under fair housing laws may be covered by other civil rights laws.

² Connecticut Commission on Human Rights and Opportunities

³ Department of Housing and Urban Development

Sample Community Contact Letter

Date

Ms. XXXXX

TITLE

Address

City

Dear MS.

RE: Notice of Opening of Waiting List for XXXXXXXX Housing Project

This is to inform you that the XXX project is now accepting applications or will begin accepting applications on XXXXXX date.

- Describe housing—elderly or family, # of bedrooms, address
- Identify dates when application process **begins and ends**
- Include **basic** eligibility—comments should be **neutral**—(Do not use any language that would discourage anyone from applying).
Use the phrasing “serving families with incomes up to 80% of the area median income for the town/city/county of XXX “
- Briefly describe Tenant Selection Methodology
- Include contact’s name and telephone number, not just email
- Fair Housing Logo should be on letterhead
- Include the application, or detailed information on how to obtain one
- Include any brochures and marketing materials
- Tell them to inform their constituency and to post the notice, if possible

Fair Housing Regulations

Department of Housing

TABLE OF CONTENTS

Fair Housing Regulations

Definitions	8-37ee- 1
Description	8-37ee- 2

Part I

Affirmative Fair Housing Marketing Requirements

Characteristics of affirmative fair marketing programs	8-37ee- 3
The affirmative fair housing marketing plan.	8-37ee- 4
Notice of housing opportunities	8-37ee- 5

Part 2

Affirmative Fair Housing Marketing Compliance

Procedures	8-37ee- 6
Requisite approvals, notifications, and reports	8-37ee- 7
Compliance meeting	8-37ee- 8
Compliance reviews	8-37ee- 9
Hearings	8-37ee- 10
Filing of testimony and exhibits	8-37ee- 11
Uncontested disposition	8-37ee- 12
Delegation of powers	8-37ee- 13
Record	8-37ee- 14
Final decision	8-37ee- 15
Petition for reconsideration of final decision	8-37ee- 16
Compliance for existing state assisted units	8-37ee- 17
Reserved	8-37ee-18-8-37ee-299

Affirmative Fair Housing Marketing and Selection Procedures Manual

General information	8-37ee-300
Definitions.	8-37ee-301
Affirmative fair housing marketing process	8-37ee-302
Application process	8-37ee-303
Selection process	8-37ee-304
Selection methodology	8-37ee-305
Insufficient number of least likely to apply applicants	8-37ee-306

Post occupancy requirements	8-37ee-307
Reserved.	8-37ee-308
Recipient training	8-37ee-309
Affirmative marketing for other grantees	8-37ee-310
Fair housing policy statement and publicity	8-37ee-311
Modification of requirements	8-37ee-312
Reporting requirements	8-37ee-313
Fair housing compliance for existing state assisted units	8-37ee-314

Fair Housing Regulations

Sec. 8-37ee-1. Definitions

The following definitions apply to Section 8-37ee-1 through Section 8-37ee-17 of the Regulations of Connecticut State Agencies:

- (1) "Commissioner" means the Commissioner of the State of Connecticut Department of Housing.
- (2) "Compliance Meeting" means a meeting held by the department for those recipients who fail to comply with their approved affirmative fair housing marketing plan.
- (3) "Department" means the State of Connecticut Department of Housing.
- (4) "Family" means a household consisting of one or more persons.
- (5) "Income Group" means one of the following household groups, adjusted by family size and based on the appropriate area median income established by the United States Department of Housing and Urban Development: (1) households with incomes twenty-five per cent (25%) or less of the area median income; (2) households with incomes more than twenty five per cent (25%) but not more than fifty percent (50%) of the area, median income; (3) households with incomes more than fifty per cent (50%) but not more than eighty percent (80%) of the area median income; (4) households with incomes more than eighty per cent of the area median income but not more than one hundred percent (100%) of the area median income; and (5) households with incomes more than one hundred per cent of the area median income.
- (6) "Least Likely to Apply" means those persons who, in the main, do not live in the area of the development because of racial or ethnic patterns, perceived community attitudes, price or other factor, and thus need additional outreach to inform them of their opportunity to live in the development. With regards to race, in predominantly white areas, these shall be minority groups; in predominantly minority areas, these shall be white groups.
- (7) "Minority" means those persons identified in Section 8-37ee-1 (h) subsections (b) through (g).
- (8) "Primary Metropolitan Statistical Area or Metropolitan Statistical Area" means areas as defined by the United States Department of Housing and Urban Development. These areas are: Bridgeport-Milford, Bristol, Danbury, Hartford, Middletown, New Britain, New Haven-Meriden, New London-Norwich, Norwalk, Stamford, and Waterbury.
- (9) "Race or Ethnic Group" means (a) White (not of Hispanic origin) persons with origins in Europe, North Africa, and the Middle East such as Canadians, Italians, Arabs, and so forth; (b) Black (not of Hispanic origin) persons with origins in Africa such as Black Puerto Ricans, Jamaicans, Nigerians, Haitians, and so forth and who may identify themselves as "Black" or "Negro" or "African-American;" (c) American Indian persons with origins in American Indian tribes such as Canadian Indians, Spanish American Indians, and French-American Indians; (d) Eskimo persons with origins in North America such as Arctic Slope and Yupik; (e) Aleut persons with origins in the Americas such as Alutiqs and Egegiks; (f) Asian or Pacific Islander persons with origins in Asia and the Pacific Islands including Chinese, Filipinos, Japanese, Asian Indians, Koreans, Vietnamese, Samoans, Hawaiians, and so forth; (g) Hispanic persons with origins in Spain, Central or South America, Mexico, the Dominican Republic or Puerto Rico who may identify themselves as "Spanish," Hispanic," "Latino," "Mexican" or others.
- (10) "Recipient" means a person, organization or individual who applies or may receive state financial assistance from the department.

(11) "Resident" means a person who lives or works in the town where the development is located. Durational residency requirements are not permitted.
(Effective February 2, 1994)

Sec. 8-37ee-2. Description

(a) The department is legislatively mandated under Section 8-37ee of the Connecticut General Statutes and the Connecticut Fair Housing Act, 46a-64b et seq. to promote fair housing choice and racial and economic integration in all housing funded in whole or in part by the department. Further, owners of state assisted housing are responsible for including in their Affirmative Fair Housing Marketing Plan provisions for the recruitment of an applicant pool that includes residents of municipalities of relatively high populations of those that would be least likely to apply. The goal of the department is to promote integrated housing by means of standards for Affirmative Fair Housing Marketing and Occupant Selection Criteria. At least twenty percent (20%) of the units shall be promoted to the group identified as "least likely to apply."

(b) Affirmative Fair Housing Marketing and Occupant Selection Criteria determine both who shall have the opportunity to apply for state assisted housing and who shall ultimately be selected for such housing. Because the state is providing financing for the rehabilitation or construction of decent, safe, and attractive housing at a very low cost to the occupant, it is incumbent upon all owners to assure that broad based marketing as well as equitable and responsible occupant selection procedures be implemented.

(c) The affirmative fair housing marketing requirements set forth in Section 837ee-1 through Section 8-37ee-17 of this regulation shall apply to all recipients where department funding is used for the development or rehabilitation of:

(1) Subdivisions or multifamily developments of five or more lots or units; or

(2) Scattered site dwelling units, where the recipient's participation in department programs has exceeded, or shall thereby exceed, the development or rehabilitation of five such dwelling units during the year.

(d) Developers shall be required to comply with all rules and orders that may be promulgated, from time to time, by the Commissioner and consistent with the Connecticut General Statutes for the development and management of projects.

(e) The Commissioner may waive any nonstatutory requirements imposed by Section 8-37ee-1 to Section 8-37ee-17, inclusive, of these regulations. Requests for a waiver shall be in writing, addressed to the Commissioner. Such waiver may only be granted with sufficient evidence that:

(1) the literal enforcement of such provisions provide for exceptional difficulty or unusual hardship not caused by the recipient;

(2) the benefit to be gained by waiver of the provisions is clearly outweighed by the detriment which shall result from enforcement;

(3) the waiver is in harmony with conserving public health, safety and welfare; and

(4) the waiver is in the best interest of the state.

(Effective February 2, 1994)

Part 1

Affirmative Fair Housing Marketing Requirements

Sec. 8-37ee-3. Characteristics of affirmative fair marketing programs

Each recipient shall meet the following requirements or, if he contracts marketing responsibility to another party, be responsible for that party's carrying out the requirements:

Department of Housing

- (1) Carry out an affirmative program to attract buyers or tenants of all minority and majority groups to the housing for initial or ongoing sale or rental. An affirmative marketing program shall be in effect for each multifamily development throughout the life of the mortgage, assistance agreement or regulatory agreement, whichever is longer. The program shall include a carefully documented assessment of what groups are in need of affirmative marketing and a clearly articulated affirmative marketing policy and outreach effort. Such effort shall typically involve publicizing to those least likely to apply, the availability of housing opportunities through the type of media customarily utilized by the recipient, including minority publications or other minority outlets which are available in the housing market area. All advertising shall include the U.S. Department of Housing and Urban Development approved fair housing logo or slogan or statement and all advertising depicting persons shall depict persons of majority and minority groups.
- (2) Maintain a nondiscriminatory policy in recruiting for staff engaged in the sale or rental of properties.
- (3) Instruct all employees and agents, in writing and orally, in the policy of nondiscrimination and fair housing.
- (4) Specifically solicit eligible buyers or tenants who may be referred to the recipient by the department or other organizations.
- (5) Prominently display in all offices in which sale or rental activity pertaining to the project occurs, the U.S. Department of Housing and Urban Development approved Fair Housing Poster and include in any printed material used in connection with sales and rentals, the U.S. Department of Housing and Urban Development approved fair housing logo or slogan or statement.
- (6) Post in a conspicuous position on all department project sites a sign displaying prominently either the U.S. Department of Housing and Urban Development approved Equal Housing Opportunity logo or slogan or statement.

(Effective February 2, 1994)

Sec. 8-37ee-4. The affirmative fair housing marketing plan

Each recipient to which section 8-37ee-1 through 8-37ee-17 of these regulations apply shall provide, on a form and in the manner prescribed by the department in its affirmative fair housing marketing and selection procedures manual, information indicating his affirmative fair housing marketing plan to comply with the requirements set forth in Section 8-37ee-1 above. The plan, once approved by the department, shall be available for public inspection at the sales or rental office of the recipient.

(Effective February 2, 1994)

Sec. 8-37ee-5. Notice of housing opportunities

The department shall prepare quarterly a list of all projects covered by section 8-37ee-1 through 8-37ee-17 of these regulations on which commitments have been issued during the preceding ninety days. The department shall maintain a roster of interested organizations and individuals, including public agencies responsible for providing relocation assistance and local housing agencies, desiring to receive the quarterly list and shall provide the list to them.

(Effective February 2, 1994)

Part 2

Affirmative Fair Housing Marketing Compliance

Sec. 8-37ee-6. Procedures

(a) The purpose of this Part is to establish a process to implement the department's affirmative fair housing marketing requirements set forth in Part 1, section 8-37ee1 through 8-37ee-5 of these regulations, by developing a comprehensive procedure which provides all recipients subject to these requirements advance information as to departmental procedures to assure compliance.

(b) Compliance procedures consist of: approval of the affirmative fair housing marketing plan and selection procedures, approval of any modifications to the plan and procedures, pre-marketing conference if necessary, reports during the application and selection period, compliance review, if necessary, and initiation of sanctions.

(Effective February 2, 1994)

Sec. 8-37ee-7. Requisite approvals, notifications, and reports

(a) The affirmative fair housing marketing plan and selection procedures shall be approved by the affirmative action office of the department prior to final approval of the recipient's application.

(b) Any modifications made to the plan and procedures subsequent to final approval shall also be approved by the affirmative action office.

(c) Recipients shall submit a Notification of Intent to Begin Marketing to the department, no later than 90 days prior to engaging in sales or rental marketing activities. Upon receipt of the Notification of Intent to Begin Marketing from the recipient, the department's affirmative action office shall review any previously approved plan and, if necessary, may schedule a preoccupancy conference at the department.

(d) Such conference shall be held prior to initiation of sales or rental marketing activities. At the preoccupancy conference, the previously approved plan shall be reviewed with the recipient to determine if the plan, and/or its proposed implementation, requires modification prior to initiation of marketing in order to achieve the objectives of the affirmative fair housing marketing regulation and the plan.

(e) Three reports regarding racial and economic make up of housing shall be made to the affirmative action office before final occupancy: one after the period for submission of applications; one after pre-screening; and one after final selection. These may be done by telephone with written follow-ups for verification. If the affirmative action office finds at any stage that there are insufficient "least likely to apply" candidates due to a lack of good faith affirmative fair marketing efforts, then the affirmative action office shall reserve the right to require additional outreach until such time as a sufficient effort has been expended or a sufficient number of applicants are available. Such additional outreach may delay the occupancy of units. The affirmative action office may further require a compliance meeting, as specified in Section 8-37ee-8, below.

(f) Recipients shall be required to collect racial and economic data from tenants and persons on waiting lists. The data collected shall analyze income groups and races served, and shall be reported to the Commissioner annually, before October thirty-first for the year ending the preceding September thirtieth. The analysis shall also include data for all households entering the housing development or project during the year ending the preceding September thirtieth and in occupancy the preceding September thirtieth.

(Effective February 2, 1994)

Sec. 8-37ee-8. Compliance meeting

(a) If a recipient fails to comply with the affirmative fair housing marketing requirements or it appears that the goals of the plan may not be achieved or that the implementation of the plan should be modified, the department's affirmative action office may schedule a meeting with the recipient.

(b) The purpose of the meeting is to review the recipient's compliance with the affirmative fair housing marketing requirements and the implementation of the plan and to indicate any changes or modifications which may be required in its plan.

(c) A notice of the compliance meeting shall be sent to the last known address of the recipient, by certified mail, or through personal service. The notice shall advise the recipient of the right to respond within seven (7) days to the matters identified as subjects of the meeting and to submit information and relevant data evidencing compliance with the affirmative fair housing marketing regulations and the plan.

(d) The recipient shall be requested in writing to provide, prior to or at the compliance meeting, specific documents, records and other information relevant to compliance including but not limited to:

(1) copies of all advertising in the Metropolitan Statistical Area (MSA) or housing market area, as appropriate, including newspaper, radio and television advertising;

(2) photo of any sale or rental sign at the site of construction;

(3) copies of brochures and other printed material used in connection with sales or rental;

(4) evidence of outreach to community organizations and any other evidence of affirmative outreach to groups which are least likely to apply for the subject housing;

(5) evidence of instructions to employees with respect to company policy of nondiscrimination in housing;

(6) description of training conducted with staff;

(7) evidence of nondiscriminatory hiring and recruiting policies for staff engaged in the sale or rental activities;

(8) copies of applications and waiting lists of prospective buyers and renters maintained by the recipient;

(9) copies of sign-in lists maintained on site for prospective buyers and renters who are shown the housing;

(10) copies of the selection and screening criteria;

(11) copies of relevant sales or lease agreements; and

(12) any other information which documents efforts to comply with the plan.

(e) Based on the evidence, the department shall notify the recipient within (10) ten days of the meeting whether or not the recipient is in compliance with the affirmative fair housing marketing regulations or plan, or if the matters raised at the compliance meeting can not be resolved.

(f) If the evidence indicates an apparent failure to comply, the department shall conduct a comprehensive compliance review.

(g) If the recipient fails to attend the meeting scheduled, the department shall notify the recipient no later than ten days after the date of the scheduled meeting, in writing by certified mail, return receipt requested, and shall advise the recipient as to whether a comprehensive compliance review shall be conducted or to recommend the imposition of sanctions.

(Effective February 2, 1994)

Sec. 8-37ee-9. Compliance reviews

- (a) All compliance reviews shall be conducted by the department's affirmative action office.
- (b) Even in the absence of a complaint or other information indicating noncompliance, the department may conduct periodic compliance reviews throughout the life of the project.
- (c) The purpose of a compliance review is to determine whether the recipient is in compliance with the department's requirements and the approved affirmative fair housing marketing plan. The recipient shall be given at least five days notice of the time set for any compliance review and the place or places for such review.
- (d) The compliance review shall cover the following areas:
 - (1) sales and rental practices, including practices in soliciting buyers and tenants, determining eligibility, selecting and rejecting buyers and renters and in concluding sales and rental transactions;
 - (2) activities to attract minority and majority buyers and renters, including the use of advertising media, brochures, pamphlets, fair housing poster; and
 - (3) data relating to size and location of units, services provided, sales and/or rental price ranges and other matters relating to the marketing of the units.
- (e) Following the compliance review, a report shall be prepared finding whether the project is in compliance or noncompliance. Whenever a finding of noncompliance is made, the report shall list specifically the violations found. The recipient shall be sent a copy of the report by certified mail, return receipt requested.
(Effective February 2, 1994)

Sec. 8-37ee-10. Hearings

Should a hearing be requested it shall be conducted in accordance with the following:

(1) Designation of Patties

In issuing the notice of hearing, the Commissioner shall designate as patties any persons known to the Commissioner whose legal rights, duties or privileges are being determined in the contested case and any person whose participation as a party is deemed by the Commissioner to be necessary to the proper disposition of such proceeding. Subsequent to the issuance of the notice of hearing, no other person before the Commissioner shall have standing as a party within the definition of section 4-166 (5) of the General Statutes, except upon the express order of the Commissioner.

(2) Participation by Persons Other Than Parties

(A) At any time prior to the Commencement of oral testimony in any hearing on a contested case, any person may request that the Commissioner permit that person to participate in the hearing. Any person not a party that is so permitted to participate in the hearing shall be identified as an intervenor for purposes of section 8-37ee-10 and shall participate in those portions of the contested case that the Commissioner shall expressly authorize.

(B) No grant or leave to participate in the hearing as an intervenor or in any other manner shall be deemed to be an admission by the Commissioner that the person he/she had permitted to participate is a party in interest that may be aggrieved by any final decision, order or ruling of the Commissioner, unless such grant of leave to participate expressly so states. An intervenor is a party of record for the limited purposes described in section 4-183 of the General Statute.

(3) Representation of Patties and Intervenors

Each person authorized to participate in a contested case as a party or as an intervenor shall file a written notice of appearance with the Commissioner. Such appearance may be filed in behalf of parties and intervenors by an attorney, an agent or other duly authorized representative subject to the rules here-in-above stated. The filing of a written appearance may be excused on behalf of the Commissioner.

(4) Commencement of Hearing

When a hearing is required by law as to any person, the contested case shall commence on the date of filing of the request or petition.

(5) Place of Hearing

All hearings shall be held at the department, 505 Hudson Street, Hartford, 06106, unless a different place is designated by statute or by the direction of the Commissioner.

(6) Notice of Hearing

(A) Except when the Commissioner shall otherwise direct, the Commissioner shall give written notice of a hearing in any pending matter to all persons designated as parties, to all persons permitted to participate as intervenors, to all persons otherwise required by statute to be notified and to such other persons as have filed with the department their written request for notice of hearing in the particular matter. Written notice shall be given to such additional persons as the Commissioner shall direct. The Commissioner may give such public notice of the hearing as the Commissioner shall deem appropriate within the provisions of Section 1-21 of the General Statutes.

(7) General Provisions

(A) Purpose of Hearing-The purpose of any hearing the Commissioner conducts under chapter 54 of the General Statutes shall be to provide to all parties an opportunity to present evidence and argument on all issues to be considered by the Commissioner.

(B) Order of Presentation-In hearing on requests and petitions, the party shall open and close the presentation of any part of the matter shall be the person making the request or petitioner.

(C) Limiting the Number of Witnesses-To avoid unnecessary cumulative evidence, the Commissioner may limit the number of witnesses or the time for testimony upon a particular issue in the course of any hearing.

(D) Written Testimony-The Commissioner may permit any party to offer testimony in written form. Such written testimony shall be received in evidence with the same force and effect as though it were stated orally by the witness who has given evidence, provided that each such witness shall be present at the hearing at which testimony is offered, shall adopt the written testimony under oath, and shall be available for cross-examination as directed by the Commissioner. Prior to its admission, such written testimony shall be subject to objections by parties.

(8) Witnesses and Testimony

(A) Powers - The Commissioner shall have the power to administer oaths, take testimony under oath relative to the matter of inquiry or investigation, subpoena witnesses and require the production of records, physical evidence, papers and documents.

(B) Superior Court - If any person disobeys the subpoena or, having appeared, refuses to answer any questions put to him/her or to produce any records, physical evidence, papers and documents requested by the Commissioner, the department may apply to the superior court in accordance with section 4-177b of the General Statutes.

(9) The following rules of evidence shall be followed in the admission of testimony and exhibits in all hearings held under section 4-178 of the General Statutes.

(A) General- any oral or documentary evidence may be received but the Commissioner shall, as a matter of policy, exclude irrelevant, immaterial or unduly repetitious evidence. The Commissioner shall give effect to the rules of privilege recognized by law in Connecticut where appropriate to the conduct of the hearing. Subject to these requirements any testimony may be received in written form as herein provided.

(B) Documentary Evidence- Documentary evidence shall be submitted in original form, but may be received in the form of copies or excerpts at the discretion of the Commissioner. Upon request by any party an opportunity shall be granted to compare the copy with the original if available, which shall be produced for this purpose by the person offering such copy as evidence.

(C) Cross-examination - Cross-examination may be conducted as the Commissioner shall find to be required for a full and true disclosure of the facts.

(D) Facts Noticed, Records - The commissioner may take administrative notice of judicially cognizable facts, including the records and the prior decisions and orders of the department.

(E) Facts Noticed, Scope and Procedure-The Commissioner may take administrative notice of generally recognized technical or scientific facts within the department's specialized knowledge. Parties shall be afforded an opportunity to contest the material so noticed by being notified before or during the hearing or by an appropriate reference in preliminary reports or otherwise of the material noticed. The Commissioner shall nevertheless employ the department's experience, technical competence and specialized knowledge in evaluating the evidence presented at the hearing for the purpose of making his finding of facts and arriving at a final decision.

(Effective February 2, 1994)

Sec. 8-37ee-11. Filing of testimony and exhibits

Upon the order of the Commissioner before, during or after the hearing any party shall prepare and file exhibits and testimony. Any additional exhibits and testimony shall be deemed to be an offer of evidence and shall be subject to such comment, reply and contest as due process shall require.

(Effective February 2, 1994)

Sec. 8-37ee-12. Uncontested disposition

Unless precluded by law any request or petition may be resolved by stipulation, agreed settlement, consent-order or default, subject to the order of the Commissioner. Upon such disposition, a copy of the order of the Commissioner shall be served one each party.

(Effective February 2, 1994)

Sec. 8-37ee-13. Delegation of powers

The Commissioner may designate any employee of the department to serve as hearing officer at a contested case hearing and to render a final decision or proposed final decision.

(Effective February 2, 1994)

Sec. 8-37ee-14. Record

The record before the Commissioner in a contested case shall include (1) all motions, requests of action, petitions, pleadings, notices of hearing and intermediate

rulings; (2) the evidence received and considered by the Commissioner; and (3) questions and offers of proof, objections and the rulings thereon during the hearing.

(Effective February 2, 1994)

Sec. 8-37ee-15. Final decision

(a) The Commissioner shall render a final decision within ninety (90) days following the close of evidence or the due date for the filing of briefs, whichever is later, in such proceedings. All decisions and orders of the Commissioner concluding a contested case shall be in writing and shall include findings of fact and conclusions of law. The Commissioner shall serve a copy of the final decision by certified mail on each party in the manner required by these rules of practice.

(b) If the Commissioner fails to comply with the provisions of subsection (a) above, in any contested case, any party thereto may apply to the superior court for an order requiring the Commissioner to render a final decision.

(Effective February 2, 1994)

Sec. 8-37ee-16. Petition for reconsideration of final decision

(a) Unless otherwise provided by law, a party in a contested case may, within fifteen (15) days' after the personal delivery or mailing of the final decision, file with the department a petition for reconsideration on the grounds that (1) an error of fact or law should be corrected; (2) new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the hearing; or (3) other good cause for reconsideration has been shown.

(b) Within twenty-five (25) days of the filing of the petition, the department shall decide whether to reconsider the final decision. The failure of the department to make a decision within twenty-five (25) days of such filing shall constitute a denial of the petition.

(c) Within forty (40) days of the personal delivery or mailing of the final decision, the department, regardless of whether a petition for reconsideration has been filed, may decide to reconsider the final decision.

(d) If the department decides to reconsider the final decision, it shall proceed within thirty (30) days to conduct such additional proceedings as may be necessary to render a decision modifying, affirming or reversing the final decision.

(e) On a showing of changed conditions, the department may reverse or modify the final decision at any time, at the request of any person or on the department's own motion.

(f) The party or parties who were the subject of the original final decision or their successors, if known, and intervenors in the original case, shall be notified of the proceeding and shall be given the opportunity to participate in the proceeding. Any decision to reverse or modify the final decision shall make provision for the rights or privileges of any person who has been shown to have relied on such final decision.

(g) A person who has exhausted all administrative remedies available within the department and who is aggrieved by the final decision may appeal to the superior court as provided in section 4-183 of the General Statutes.

(Effective February 2, 1994)

Sec. 8-37ee-17. Compliance for existing state assisted units

Each owner of five or more state assisted housing units shall comply with these requirements within at least one year of the effective date of this regulation.

(Effective February 2, 1994)

Secs. 8-37ee-18-837ee-299. Reserved

Affirmative Fair Housing Marketing and Selection Procedures Manual

Sec. 8-37ee page 12 (10-96)
§ 8-37ee-18

Department of Housing

Sec. 8-37ee-300. General information

- (a) This manual should be used in conjunction with the Fair Housing regulations under Section 8-37ee-1 through Section 8-37ee-17 of the Regulations of Connecticut State Agencies, and the instructions accompanying the Affirmative Fair Housing Market Form included in this manual.
- (b) The purpose of this manual is to assist recipients of state financial assistance from the department in understanding what shall be required of them, as well as to further implement the provisions of Section 8-37ee-1 through Section 8-37ee-17 of the Regulations of Connecticut State Agencies.
- (c) The Affirmative Fair Housing Marketing Plan shall be submitted on the form, and in the manner, prescribed by the department. The plan shall include all of the techniques which recipients intend to employ to assure that marketing is broad-based and that prospective buyers and/or renters of varied income groups, including persons with physical disabilities would feel welcome to apply. At least twenty percent (20%) of the units shall be promoted to the "least likely to apply" group.
(Effective February 2, 1994)

Sec. 8-37ee301. Definitions

All terms defined in Section 8-37ee-1 of the Regulations of Connecticut State Agencies shall have the meanings set forth there.

The following apply to Section 8-37ee-300 through Section 8-37ee-314 of the Regulations of Connecticut State Agencies:

- (1) "Least likely to apply" means those persons who, in the main, do not live in the area of the development because of racial or ethnic patterns, perceived community attitudes, price or other factor, and thus need additional outreach to inform them of their opportunity to live in the development. In predominantly white areas, these shall be minority groups; in predominantly minority areas, these shall be white groups.
- (2) "Recipient" means a person, organization or individual who applies or may receive state financial assistance from the department.
- (3) "Resident" means a person, including an applicant, living or working in the municipality in which the housing is located. Durational residency requirements are not permitted.
(Effective February 2, 1994)

Sec. 8-37ee-302. Affirmative fair housing marketing process

(a) Assessing Affirmative Marketing Needs

Recipient plans shall identify the group(s) "least likely to apply" to the housing through the submission of relevant demographic data. Data may be derived from the U.S. Census municipal sources, regional planning agencies, civil rights groups, fair housing officers, social service agencies, and like organizations. Source documentation shall be clearly identified.

(b) Affirmative Marketing Outreach

- (1) Mechanisms - Recipients' plans shall determine and identify the most appropriate outreach mechanisms which should include: newspaper, radio, television, and other media advertisements as well as flyers and announcements to social service

agencies and other organizations with the desire and capacity to inform potential applicants of the availability of housing. These mechanisms or organizations shall represent those most likely to be read, heard, seen by, or in contact with applicants least likely to apply.

(2) Locale - Recipients' plans shall provide for the dissemination of information at a minimum in (a) the largest city located in the nearest Primary Metropolitan Statistical Area or Areas or Metropolitan Statistical Area or Areas, (b) the regional planning area, and (c) any other areas which are likely to contain high minority populations and where public transportation or public highways and/or job availability make it likely that minorities might wish to move where the development is located.

(3) Time frame - Recipients' plans shall identify the time frame, duration, and frequency of the materials to be announced or distributed. At a minimum affirmative fair housing marketing shall begin prior to general marketing. There shall be at least three (3) documented efforts with updated materials as necessary: the first at the beginning of construction; the second at approximately 50 percent completion; and the final, six to eight weeks prior to completion.

(4) Notice of Intent to Begin Marketing - Recipients are required to give notice to the department no later than 90 days prior to engaging in sales or rental marketing activities.

(5) Prominence - Recipients' plans shall provide that any materials shall be prominently displayed or appear where they are most likely to be read or seen, e.g. not in the "legal notices" section of the paper but in more prominent ads.

(6) Content - Recipients' plans shall identify the content of the materials to be used which at a minimum shall: (a) identify the location of the housing; (b) provide a narrative description of the housing; (c) identify when the application process shall begin and end; (d) be neutral in the sense of encouraging all potentially eligible applicants to apply; (e) include a contact person and telephone number; (f) display the fair housing logo and clearly state the owner's commitment to Fair Housing and non-discrimination; (g) where relevant, be provided in both English and Spanish; (h) where there is any advertising depicting persons depict persons of both sexes and persons of majority and minority groups; (i) describe the application and selection process as stated in Section 8-37ee-304 and Section 8-37ee-305 of these regulations; and (j) include the fair housing policy statement as stated in Section 8-37ee-311 below.

(7) Community contacts - Recipients' plans shall identify community contacts which shall include individuals and organizations that are well known in the area who can reach and assist those least likely to apply. These may include church groups, housing counseling groups, legal services organizations, labor unions, minority and women's organizations, shelters, social service agencies, housing authorities, and town officials. Each of these entities shall receive appropriate materials as described in subsection (5) with additional instructions, if necessary.

(8) Counseling and application assistance - Recipients' plans shall provide that either the contact person or a housing counseling organization, fair housing officer, or other similar party is trained in fair housing and its requirements and is ready and willing to assist all applicants including the least likely to apply with the application process.

(9) Follow-up - Recipients' plans shall provide for follow-up meetings or telephonic reports from the various outreach organizations listed in subsection (7) in order to evaluate the effectiveness of the affirmative marketing. Where organizations

determine that few potential applicants are displaying an interest, alternative approaches should be considered.

(10) Public inspection - Recipient approved plans shall be available for public inspection.

(Effective February 2, 1994)

Sec. 8-37ee-303. Application process

(a) The application period shall extend for at least 90 days before initial occupancy. An application deadline shall be established when all applications shall be completed and returned. Applications received after the deadline shall not be considered unless there is: (1) an insufficient number of initial applicants; and/or (2) the department determines that more affirmative marketing is necessary.

(b) Recipients shall use a standard application form furnished by the department included in this manual.

(c) Anyone seeking to apply shall be given the opportunity to do so.

(d) Anyone needing help in filling out the forms shall be assisted.

(e) Each application received shall be immediately dated and time stamped. Each applicant shall be given a receipt with the date and time on it.

(f) Each applicant shall have a control number assigned in chronological order.

(g) A file shall be opened for each applicant. The file shall remain confidential information.

(h) Selection shall occur at least thirty (30) days before scheduled occupancy to prevent vacancies.

(Effective February 2, 1994)

Sec. 8-37ee-304. Selection process

(a) Recipients should develop a written selection plan which covers the tenant selection process they intend to use. Such plan should include, at a minimum, the following:

(1) Procedures for accepting applications and screening applicants;

(2) Fair housing requirements;

(3) When applicants may be rejected; and

(4) Procedures for selecting applicants from the waiting list(s).

(b) At a minimum, the following factors shall be used to screen applicants:

(1) demonstrated ability to pay rent on time;

(2) housekeeping habits based on visits to the applicant's current residence;

(3) comments from former landlords; endorsement from at least two is preferred; and

(4) Credit checks may be obtained. These may be useful when no rental payment history is available. A lack of credit history, as opposed to a poor credit history, is not sufficient grounds to reject an applicant.

Recipients should try to obtain all credit checks, landlord and personal references and so forth before the home visit and interview so that if negative information is received the applicant shall be given the opportunity to explain the circumstances.

(c) Recipients shall also prepare one Occupant Selection List which shall be subdivided by the number of units available and bedroom size. The following guidelines shall be used to determine minimum and maximum housing capacity:

Bedroom Size	Minimum	Maximum
00 (single room occupancy)	1	1
0 (efficiency unit)	1	1
1	1	2
2	2	4
3	3	6
4	5	8

(Effective February 2, 1994)

Sec. 8-37ee-305. Selection methodology

(a) For purposes of fairness and equity the department allows either a point system or a purely random lottery selection method. However, if there is a tie score under the point system method and there is a limited number of units available for persons with the same point score, the random selection method or first come, first serve (chronological order) shall be used in conjunction with the point system to select which applicant gets the unit.

(b) Point System Selection Method

(1) Point systems may be altered by the Commissioner to comply with fair housing goals. Where a program dictates other kinds of requirements, e.g. limited equity cooperatives may look for participants willing to put in sweat equity, points for such neutral categories may be added with the approval of the Commissioner.

(A) **Calculation of Points** - The applicant receives the full point score or none; subjective practical scoring is not allowed. Where department program requirements mandate selection criteria such as age, income, etc., applicants shall first meet that standard. Where an applicant does not meet the program requirements, the applicant may be rejected without further analysis.

(2) The following is the Department's approved point system that recipients shall use.

POINT SYSTEM METHOD

(i) SUBSTANDARD HOUSING	25 point maximum
condemned or verified serious housing code violations	25 points
inadequate heating, plumbing, or cooking facilities	20 points
(ii) LIVING SITUATION	25 point maximum
living in documented physically or emotionally abusive situation	25 points
living in a shelter or transitional housing	25 points
living in temporary housing with others because of conditions beyond applicant's control (condemnation, foreclosure, fire, loss of job, etc.)	20 points

living in overcrowded conditions
in own housing unit (e.g. 1.5 persons
per room) 15 points

(iii) INCOME/RENT RATIO 15 point maximum

currently paying more than
50% of income for rent
or housing 15 points

currently paying between
31-50% of income for
rent/housing 10 points

**(iv) (OPTIONAL) RESIDENT OR
LEAST LIKELY TO APPLY
APPLICANT 10 points**

(a) If this resident selection category is used, the 10 points shall be awarded to *both* residents and least likely to apply applicants. However, if the owner chooses, more points may be awarded to the least likely to apply applicants (e.g. 15, 20, 25 points, etc.).

(3) Points shall be added up for each applicant. The department recommends that the recipient create a pool of candidates with the highest score and which exceed the number of available units by bedroom size by at least three times. Applicants shall be selected by a lottery.

(4) If the number of applicants does not exceed the number of available units by bedroom size by at least three times applicants may be selected on a first come first serve basis.

(c) Random Selection Method - Lottery

If recipients select the random selection method the factors they shall use in determining selection shall include:

(1) Determining the income eligibility of all applicants;

(2) pre-screening/interviewing for credit worthiness and other reasonable common rental or ownership criteria; and for verification of applicant information.

(3) Putting all applicants with favorable interviews, that is, having no ground for disqualification based on subsection (e) of this section, back in the pool and choosing by a lottery system.

(d) Interview or Home Visit

(1) Ideally all applicants meeting income guidelines should be interviewed. When a large number of applicants apply, recipients may conduct interviews and/or home visits with only those who meet the minimum threshold point score, so long as the number of interviewees significantly exceeds the number of available units.

(2) The interview should be used for purposes of verifying and clarifying information in the application as well as exploring the ability and willingness of the applicant to meet financial commitments and to assume the other responsibilities of tenancy or ownership. Points should not be added or subtracted as a result of the home visit and interview unless information on the application was erroneous.

(e) Grounds for disqualification

(1) Applicants may be disqualified from final selection upon documentary verification of any of the following: (A) the applicant or any member of the applicant's household has a history of disturbing neighbors, destroying property, or living or

housekeeping habits which would substantially interfere with the health, safety, or peaceful enjoyment of other residents; (B) the applicant has a history of rental nonpayments within the past 12 months without reasonable justification (justification might be: substandard housing, loss of a job, etc.); (C) the applicant has knowingly falsified information in the application process; or (D) the applicant cannot demonstrate an ability to pay the base rent.

(2) Applicants deemed ineligible, for whatever reason(s), shall be notified in writing, before the final selection, of the reason(s) for rejection and their right to appeal within ten days of the rejection. Recipients should inform applicants that an appeal should be made immediately to assure their return to the applicant pool if they prevail. An impartial hearing officer shall be chosen by the recipient who shall issue a written opinion within five days of the hearing. All appeals should be heard within five days of the request.

(3) Applicants still aggrieved shall be informed of their right to appeal the decision of the hearing officer to the department's affirmative action office. Such appeal shall be made in writing, and brought within ten days of the adverse decision.

(4) Recipients shall keep the following materials on file for at least three years: (1) application; (2) initial rejection notice; (3) any applicant reply; (4) the recipient's final response; and (5) all interview and verified information on which the rejection was based.

(Effective February 2, 1994)

Sec. 8-37ee-306. Insufficient number of least likely to apply applicants

(a) If the Affirmative Action Office finds, at any stage, that there is an insufficient amount of least likely to apply candidates due to a lack of good faith affirmative fair marketing it shall have the right to require additional outreach until such time as a sufficient effort has been expended or a sufficient number of applicants is available. Such additional outreach may delay the occupancy of units.

(b) Where the department determines that good faith efforts have been made to recruit applicants who are least likely to apply and there is still an insufficient number of eligible applicants, recipients shall be given permission to rent or sell units to other eligible applicants.

(c) The department's determination of the owner's good faith efforts shall include, but not be limited to: substantiating that the outreach which it stated in its Affirmative Fair Housing Marketing Plan was actually completed; that such efforts met time and durational requirements; that the marketing approach was amended or enhanced when found deficient; and that there were particular local, regional, and/or market reasons for the failure of the Affirmative Fair Housing Marketing Plan to attract a sufficient pool of applicants who are least likely to apply. The owner shall develop and maintain adequate documentation in a manner prescribed by the department of its good faith efforts.

(Effective February 2, 1994)

Sec. 8-37ee-307. Post occupancy requirements

(a) Following the initial lease-up or sales, recipients shall continue to affirmatively market to those least likely to apply for the life of the mortgage, assistance agreement or regulatory agreement, whichever is longer. Recipients shall make every good faith effort to maintain a racially and economically integrated housing development.

(b) Recipients should schedule application periods as in the initial lease-up or sales at reasonable intervals. Such application periods shall have a deadline and new applicants shall be chosen as in the initial selection system. Prospective applicants -

shall only be considered during this application period. Where point systems are used, new applicants with higher points may not displace previous waiting list applicants unless the waiting lists have been reviewed and updated.

(c) The department shall require annual updates on whether recipient affirmative fair marketing goals have been met and whether recipients have been able to sustain their goals. Upon review of the information the department may require remedial action where it is deemed necessary. Records of all affirmative fair marketing, tenant selection, and waiting lists should be retained for at least five years or as set forth in the Assistance or Regulatory Agreement with the Department.

(d) Recipients may be monitored on a yearly basis for compliance with the fair housing requirements stated herein and may be subject to random on site monitoring.

(Effective February 2, 1994)

Sec. 8-37ee-308. Reserved

Sec. 8-37ee-309. Recipient training

Prior to any disbursement of financial assistance recipients shall be required to attend a seminar on implementing the department's Fair Housing regulations. Recipients are encouraged to attend other fair housing forums and participate in fair housing events. All recipient employees and agents shall be informed, in writing, and orally, of fair housing requirements.

(Effective February 2, 1994)

Sec. 8-37ee-310. Affirmative marketing for other grantees

Recipients who are not producing housing shall affirmatively market their programs so that a broad range of majority and minority beneficiaries are encouraged to apply for whatever assistance is provided. Outreach should comply with the Affirmative Fair Housing Marketing Plan Guidelines.

(Effective February 2, 1994)

Sec. 8-37ee-311. Fair housing policy statement and publicity

(a) Any recipient, including but not limited to sponsors of housing, technical assistance organizations, and subcontractors, shall adopt a fair housing statement prior to the receipt of department funds which shall include the following:

(1) Recipient's commitment to promote Fair Housing choice and not to discriminate against any person as prohibited in General Statutes 46a-64c as amended. Protected classes include: race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income, familial status, physical or mental disability, or sexual orientation. The provisions of 46a-64c should be specifically included in the pledge.

(2) Recipient's commitment to promote racial and economic integration in any housing developed or supported with department funds being sought or recipient's commitment to seek beneficiaries from all racial and ethnic groups as well as the physically and mentally handicapped and families with children, and to seek a broad range of income eligible beneficiaries, whichever provision is relevant to the kinds of services provided by the grantee.

(3) Identifies the person assigned Fair Housing responsibilities by name, position, address, and telephone.

(4) Includes a discrimination complaint procedure which shall be disseminated to applicants and posted.

(5) Is revised as needed.

- (6) States how the policy shall be disseminated.
- (7) Is signed by the Board President, CEO, or other comparable party.
- (b) Before dissemination the policy shall be approved by the department. The policy shall be prominently posted in the recipient's offices and also on the site where building or rehabilitation is taking place.
- (c) Recipients shall prominently display in all offices, in printed materials, and on housing sites fair housing posters and/or the fair housing logo which may be obtained from the department's affirmative action office.
(Effective February 2, 1994)

Sec. 8-37ee-312. Modification of requirements

- (a) Where another program funding requires stricter fair housing requirements, upon approval of the department those shall be followed.
- (b) Where federal sources are also funding the housing, federal fair housing requirements, as well as these shall be adhered to.
- (c) Where the department is funding minor rehabilitation, these requirements may be adjusted as determined by the department.
(Effective February 2, 1994)

Sec. 8-37ee-313. Reporting requirements

- (a) Three reports regarding racial and economic information shall be submitted to the Affirmative Action Office before final occupancy: one after the period for submission of applications; one after pre-screening; and one after final selection. These may be done by telephone with written follow-ups for verification.
- (b) Recipients shall be required to collect racial and economic data from tenants and persons on waiting lists. The data collected shall analyze income groups and races served, and shall be reported to the Commissioner annually, before October thirty-first for the year ending the preceding September thirtieth. The analysis shall also include data for all households entering the housing development or project during the year ending the preceding September thirtieth and in occupancy the preceding September thirtieth. This information shall be in report form (written) and in the manner prescribed by the department.
(Effective February 2, 1994)

Sec. 8-37ee-314. Fair housing compliance for existing state assisted units

- (a) Each owner of five or more state assisted housing units shall develop an affirmative fair housing marketing plan for each such development as described in Section 8-37ee-302, and selection procedures as described in Section 8-37ee-304 of these regulations.
- (b) Each owner of state assisted housing shall evaluate its waiting list for each development to determine whether or not the waiting list provides for racial and economic diversity as required by Public Act 91-362.
- (c) If there are either insufficient families who are least likely to apply on the list or near the top of the list such that they might be housed within the next year, then the units shall be affirmatively fair marketed.
- (d) Eligible applicants currently on the waiting list may not be removed from such list unless duly purged. However, once any additions are to be made to the list, all requirements of this manual shall apply to the new applicants.
- (e) Owners of currently assisted state housing shall be expected to comply with all other requirements of this manual within a reasonable time after its effective date and, at a maximum, within one year of such date.

AFFIRMATIVE FAIR HOUSING MARKETING PLAN TIME FRAMES/PHASES

For recipient's convenience, please find below, an outline of the Affirmative Fair Housing Marketing Plan time frames/phases.

PRE-APPLICATION/APPLICATION PHASE

- (a) A pre-application briefing is held at the department before the application for funding is submitted.
- (b) The affirmative fair housing marketing plan (plan) and selection procedures (procedures) are submitted with the funding application. They are reviewed and approved or returned for resubmission. They shall be approved before the final application is approved by the department.
- (c) Any modifications made to the plan and/or procedures shall be submitted for approval.

MARKETING PHASE

- (a) 90 days prior to affirmative fair housing marketing (which shall begin prior to general marketing), a Notification of Intent to Begin Marketing shall be submitted to the department.
- (b) The plan and procedures are reviewed and a preoccupancy conference may be scheduled.
- (c) Affirmative fair housing marketing begins at the start of construction.
- (d) A second such marketing effort takes place at 50 percent completion.
- (e) Final fair housing marketing occurs 6-8 weeks prior to completion.
- (f) If inadequate numbers of "least likely to apply" candidates are applying, recipients should reassess outreach mechanisms.

APPLICATION PHASE

- (a) The time for receipt of all applications shall extend for at least 90 days.
- (b) Reports to the department regarding racial and economic make-up shall be submitted:
 - (1) after the application period ends
 - (2) after pre-screening is completed
 - (3) after final selection

POST OCCUPANCY PHASE

- (a) Affirmative fair housing marketing and selection procedures shall be continued for the life of the project.
- (b) Yearly updates on meeting and sustaining goals shall be required.
- (c) The department may randomly monitor housing to assure continuing compliance.
- (d) If at any time the department determines that there are insufficient "least likely to apply" applicants or occupants due to the lack of a good faith effort on the part of the recipient, further outreach and/or a Compliance Meeting may be required.
(Effective February 2, 1994)

Equal Opportunity in Housing
Executive Order 11063
as amended by Executive Order 12259

The Law.

All departments and agencies are directed to take all action necessary and appropriate to prevent discrimination in housing and related facilities owned or operated by the Federal Government or provided with Federal financial assistance and in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans insured or guaranteed by the Federal Government.

Discrimination Prohibited.

Race, Color, Religion, sex, National Origin, Familial Status & Disability.

Coverage.

Housing and related facilities which are owned or operated by the Federal Government or housing and related facilities provided by Federal financial assistance including mortgage insurance and guaranty programs.

Non-Coverage.

Most conventionally financed housing. (However, housing that is covered is such housing constructed on Urban Renewal Land sold by the LPA to the Developer.)

Enforcement.

Basic Enforcement:

1. Cancellation or termination of any agreement of contract.
2. Refrain from extending further aid under any program.
3. Refuse to approve a lending institution or any other lender as a beneficiary under any program.

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Connecticut Fair Housing Center
221 Main Street
Hartford, CT 06106
860-247-4400
www.ctfairhousing.org