

Accessing Opportunity: Affirmative Marketing and Tenant Selection in the LIHTC and Other Housing Programs

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Executive Summary

Even where affordable housing is available in high-opportunity communities, it may not truly be accessible to low-income and minority tenants without well-designed outreach and admissions practices. Communities rich in social resources—such as good schools, environmental quality, and safe streets—frequently have a history of exclusion that can be forbidding to minority families who consider moving to them. This dynamic is reinforced by the simple difficulty of gaining meaningful information about rentals in areas where residents lack friends, family, or other community connections. Affirmative marketing programs—supported by nondiscriminatory tenant selection procedures—serve an important role in ensuring equal access to information, helping people overcome the legacies of exclusion, and promoting fair and open housing choice.

Robust, thoughtfully crafted marketing and tenant selection policy can help federal and state agencies (as well as individual developers) ensure that their resources foster diverse communities and counter the legacies of exclusion. In addition to being good policy, these responsibilities arise from the Fair Housing Act, which established the civil rights mandates of nondiscrimination and integration and includes a statutory directive that all federal housing programs “affirmatively further fair housing” (AFFH).¹ This directive requires that all agencies administering housing-related programs go beyond policing discrimination to ensure that federal housing resources actively advance integration and housing choice.²

The Department of Housing and Urban Development implements the AFFH requirement through its Affirmative Fair Housing Marketing (AFHM) guidance, along with other civil

¹ 42 U.S.C. §3608.

² The “AFFH” provision of the Fair Housing Act, 42 USC § 3608(d), provides that: “All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary [of HUD] to further such purposes.” *See also, e.g.,* Shannon v. HUD, 436 F.2d 809 (3d Cir.1970); NAACP v. HUD, 817 F.2d 149 (1st Cir. 1987).

rights regulations applicable to its own programs. However, our largest low-income housing development program, the Low Income Housing Tax Credit, lacks any federal affirmative marketing guidelines, tenant selection rules, or other AFFH guidance to the state housing finance agencies (HFAs) that administer the program.

This report addresses both the need for AFHM and tenant selection guidance governing the LIHTC program; and the need for stronger, up-to-date AFHM and tenant selection guidance throughout all federal housing programs, including HUD programs. We describe the role that marketing and tenant selection should play in addressing informational and other disparities to *actually connect* residents to equal and open housing choice. We also identify specific ways in which commonly-used procedures and existing guidance tend to undermine this goal, despite the good intentions of many policymakers and developers: in particular, the lack of clear performance standards that can be used to effectively target technical assistance resources (as well as compliance reviews); the failure to consistently require region-wide outreach; the paucity of marketing content relevant to potential tenants; and tenant selection procedures that tend to disadvantage minority and non-local applicants.

Drawing upon the successful initiatives of individual states and developers, as well as an examination of existing housing program guidance, this report offers several layers of recommendations intended to help HUD, Treasury, state housing finance agencies, and developers or property managers all take meaningful steps toward fair, effective marketing and tenant selection.

With regard to marketing, we recommend that:

- Treasury apply HUD’s AFHM regulations, including the AFHM compliance regulation, to the LIHTC program, as part of its interpretation of the “general public use” requirement. This should include yearly submission of an AFHM Plan by each developer/manager to the state HFA and the agency responsible for AFHM oversight.
- On the level of sub-regulatory guidance, the LIHTC marketing program should track the substantive requirements contained in the HUD guidance (HUD’s AFHM Handbook and Plan) and also set a new AFHM standard where time and experience show the existing guidance to be ineffective or in need of updating. In addition to aiding these steps by Treasury, HUD should revise its own AFHM guidance to provide more robust marketing standards applicable across its programs.
- Given its extensive fair housing expertise, HUD should coordinate with Treasury and the HFAs to develop AFHM oversight and technical assistance policies applicable to the LIHTC program (as governed by the improved guidance). Treasury, IRS, HUD, and the HFAs should also coordinate to designate an agency (or agencies) with primary responsibility for AFHM and tenant selection oversight in the LIHTC program. This should include a policy to avoid the duplication of oversight efforts where the development receives both HUD and LIHTC support; and in such cases, the stronger guidance should apply.

- Improvements and updates to the AFHM guidance include the following: consistently required region-wide marketing; clear standards on the use of demographic data to designate the “least likely to apply” marketing targets; clear performance standards employing demographic metrics; information-rich content for marketing materials; and widely-accessible listings of housing in high-opportunity/low-poverty areas.
- Through their LIHTC Qualified Allocation Plans, state housing finance agencies require a threshold level of marketing efforts for all developments; and incentivize commitment to a more complete “best practices” portfolio of personalized, highly engaged marketing efforts, particularly for developments in high-opportunity/low-poverty areas.
- State agencies facilitate the pooling of marketing resources, for example by coordinating listings of properties in high-opportunity/low-poverty areas for widespread distribution.
- As an initial step toward AFHM implementation, industry groups sign on to voluntary AFHM agreements (an option developed by HUD).

With regard to tenant selection, we recommend that:

- HUD and Treasury coordinate to issue detailed guidance on avoiding tenant selection procedures with discriminatory effects. We recommend that HUD develop this guidance and Treasury explicitly reinforce its application to the LIHTC program (as part of its interpretation of the “general public use” requirement); state agencies may also initiate state-level guidance to attach meaningful fair housing protections to their tax credit programs. Guidance should make clear that developers are required to avoid tenant selection practices that are discriminatory *or* that impair the affirmative marketing program’s pursuit of equal access to housing for all groups throughout a region. Guidance should 1) instruct developers and managers in specific practices to be avoided and 2) recommend effective, less discriminatory alternatives to common discriminatory practices.
- As with affirmative marketing oversight, Treasury, IRS, HUD, and the HFAs coordinate to designate an agency with primary responsibility for enforcing tenant selection fair housing requirements in the LIHTC program. Oversight procedures should entail the examination of applicant and tenant data, as well as the review of an annual AFHM Plan including a description of tenant selection procedures.
- State HFAs adopt QAP scoring criteria and incentives for policies that promote integration (such as preferences to families from high-poverty areas applying to developments in low-poverty areas).
- New guidance convey a strong presumption against the use of local residency preferences, which tend to undermine AFHM and fair housing goals.
- New guidance require improved waitlist management that avoids disadvantaging nonlocal and other residents who may have relative difficulty applying; for

example, avoiding in-person application procedures, requiring the use of lotteries (rather than chronological preference) to select tenants, etc.

- Guidance require (or incentivize, by awarding QAP points to developers who commit to a “best practices” protocol developed by the agency) that developers avoid screening practices that disproportionately disadvantage minorities where less-discriminatory alternatives are available. For example, applicants with “thin file or no file” credit reports should be permitted to submit alternative financial information.

These recommendations, discussed in greater detail in our report, will help policymakers ensure that subsidized properties are marketed and occupied in a manner that generates diverse and open neighborhoods. When we invest resources in valuable housing programs such as LIHTC development, those programs should further the government’s existing civil rights obligations as well as shelter families in need. Strong AFHM and tenant selection guidance can help agencies leverage their housing investments toward both these ends.

To see a copy of the full report, go to
www.prrac.org/pdf/affirmativemarketing.php

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