

Tenant Selection Criteria Webinar

February 17, 2015

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Q1. A family of three adults lives in a 3 bedroom, two adults decide to move out, there are no 1 bedroom units available, there are no vacancies, do we have to terminate or non-renew?

A1. If a Development has an occupancy standard, 10 TAC 10.610(b)(8) states that this standard can be no less than two persons (over the age of six) per bedroom. This in no way limits the minimum number of people that can live in the unit. In this example, if the Development's occupancy standard is no more than 2 persons per bedroom, then maximum number of people that could live in the unit is 6 people (3 bedrooms x 2 people). It is when there are more than 6 people in the unit that there could be an issue under the Development's occupancy standards.

Q2. How does 504 and VAWA effect the wait list, and is there specific wording that we need to use? Are they a priority on the list and what is the wording on the criteria that they take priority over other wait list applicants?

A2. Neither persons protected under VAWA nor persons with disabilities are always required to be prioritized on the waitlist under 10 TAC 10.610. However, for 504 HUD states, "When an accessible unit becomes vacant, before offering the unit to an individual without, offer the unit: first, to a current occupant of the project requiring the accessibility feature and, second, to an eligible qualified applicant on the waiting list requiring the accessibility features." Also, VAWA may require that existing tenants be given priority for transfers, but this should be a case by case analysis, under the law.

Q3. Can a waiting list be maintained electronically?

A3. Yes. Records can be maintained electronically as long as they are available for review upon request.

Q4. Can TAA Red Book forms for non-renewal and lease termination still be used?

A4. The TAA *Advance Notice of Lease Termination at End of Lease Term or Renewal Period* appears to only allow the owner to notify the household of when the lease ends and that the lease will not be renewed. It does not allow for the owner to state the specific reason for the termination or non-renewal as required in 10 TAC §10.610(d)(3). Staff has not reviewed all TAA Red Book forms. TAA forms should be reviewed for compliance with the rule.

Q5. Can we keep the denied applications electronically?

A5. Yes. Records can be maintained electronically as long as they are available for review upon request.

Q6. Can you go more into detail regarding women who are pregnant (needing proof of pregnancy)?

A6. Your application must include a question regarding anticipated changes in household size within the next 12 months. If an applicant indicates that there will be a change because they are having a baby, do not ask for proof of pregnancy.

Q7. Did I understand correctly when you said we could list all possible reasons for denial on criminal/credit on a separate document that can be shown to applicant prior to signing release? This document does not have to be given to each applicant as long as they are given the opportunity to read over...correct?

A7. Reasons for criminal/credit denial may be listed on a separate document, such as a screening criteria packet or application packet, as long as this information is given to the tenant. As a reminder, new provisions in §10.617(f)(4) will require a development to accept mailed applications; the development should consider how these items will be made available to tenants who apply via mail. Additionally, language such as "including but not limited to" may be used to describe common circumstances for denial; however, if a development routinely sees that tenants are being denied for criteria that is not listed as part of reasons for criminal/credit denial, the development should add these items to lists used to describe common circumstances for denial.

Q8. Did you say we are now required to "rescreen" all renewals?

A8. 10 TAC 10.610 does not require owners to "rescreen".

Q9. Do current tenants have priority on the waitlist if they request a transfer vs. a new applicant?

A9. No. The waitlist should function without regard for where the applicant currently lives. As a reminder, if the transfer request is related to a reasonable accommodation or due to protections under VAWA , the owner would need to consider the transfer separately from the waitlist.

Q10. Do we have to have copies of the denied background or credit reports in denied files along with the letter outlining the denial reasons?

A10. The rule is not specific to this but it would be a good practice to keep the documentation for the reason for the denial together with the denial letter sent to the applicant. If the management company organizes their records in a different manner, that is fine as long as an owner is able to locate the support documentation that corresponds to a particular denial.

Q11. Do we need to list applicants that have cancelled on their own on the denial List?

A11. No, but as a recommended practice an owner should be maintaining records on who cancels, especially if they have paid an application fee because that fee would need to be included when calculating the actual out of pocket cost to support charges. The Department may request those records for other compliance provisions.

Q12. Does a disabled head of Household only need to make 2 times the rent amount?

A12.. The minimum income standard is related to the gross income of the household. The rule does not require a minimum income standard for each person of the household

Q13. What is rental assistance information? Is rental assistance referring to Section 8 Housing?

A13. Rental assistance is related to assistance received under the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance programs. Rental assistance is not limited to Section 8.

Q14. For the denial log that we create should we input all the denied applicant information prior to 4/1/15 or just for those denied applicants 4/1/15 forward?

A14. Some Department programs (such as the HOME program) have always required owners to provide written notices to applicants regarding the reasons for denial. For all other Developments, the rule is effective April 1, 2015.

Q15. For unit transfers based upon a reasonable accommodation request, who is financially responsible for the unit transfer?

A15. Please see 10 TAC§1.204 for guidance on reasonable accommodations.

Q16. Does the new tenant selection criteria rule apply to Housing Tax Credit properties? What if your Housing Tax Credit property has no waitlist, would the waitlist procedures still apply?

A16. Yes. This rule applies to Housing Tax Credit Program (HTC); The HOME Investment Partnerships Program (HOME); The Tax Exempt Bond Program (Bond); The Housing Trust Fund Program (HTF); The Tax Credit Assistance Program (TCAP); The Tax Credit Exchange Program (Exchange); The Neighborhood Stabilization Program (NSP); and Section 811 Project Rental Assistance (PRA) Program. Even if the Development currently has no need for a waitlist because it is not 100% occupied, the owner must create waitlist procedures to address how the Development will handle applicants in the event that the Development is completely leased up. In addition, even if there is no waitlist to move on to the property, you must create a waitlist procedure for existing households to be re-designated to a lower income/rent restrictions.

Q18. I understand pet restrictions don't apply to service animals but can we still require residents to follow the pet rules of picking up after the animal and leash rules?

A18. Pet rules do not cover the behavior of service animals. The best authority on this guidance is HUD Notice FHEO-2013-01, which shares HUD and DOJ guidance on applying various service animal laws. This Notice states that under Section 504 and the Fair Housing Act, service/assistance animals must be permitted to accompany the individual with the disability to all areas of a Development where persons are normally allowed to go unless: 1) the specific animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation; or 2) the specific animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. If a property has extended a reasonable accommodation and a pet's behavior rises to the level that HUD's guidance has considered in the notice, the Development, on a case by case basis should meet with the tenant to discuss the issue where possible, submit a notice to the tenant regarding the service animal's behavior, and may request modifications in behavior or assurances that behavior will not reoccur as a condition to retaining the accommodation for the service animal. The referenced notice also provides that a housing provider may require a tenant to cover the cost of housing repairs for damage the animal causes to the dwelling unit or common areas, reasonable wear and tear excepted, if it is the provider's practice to assess tenants for any damage they cause to the premises. As a reminder, however, no deposits may be charged for a reasonable accommodation and no pet deposits may be charged for service animals.

Q19. If our waiting list is maintained by a housing authority does the property still need to keep a denial log?

A19. A log of all denied applicants that completed the application process must be maintained and available for review upon request. Where it is maintained is up to the owner.

Q20. If the property has screening practices at renewal and a resident is now ineligible based on a new tenant selection criteria, is it a MAY or a MUST to issue a non-renewal?

A20. The rule only provides parameters under which an owner could rescreen an existing household's current credit and/or criminal for consideration of continued occupancy. You are not required to do so. If you choose to do so, be sure to apply the criteria consistently and in compliance with state and Federal fair housing laws.

Q21. If we have in our tenant selection criteria that you must make 2 times the rent, are we allowed to apply that case by case?

A21. The criteria described in the Tenant Selection Criteria, must not discriminate against protected classes. Depending on the specific facts, owners could consider exceptions for reasonable accommodation, because of VAWA protections, or because of participation in a referral program. However, the written tenant selection criteria should explain such criteria.

Q22. In regards to requesting medical records - tenants who ask out of their lease due to medical reasons. In this case, it is allowed?

A22. Yes.

Q23. Is the Written Leasing Criteria, in the HTC program, going to be eliminated now that the Tenant Selection Plan is effective?

A23. The Tenant Selection Criteria and the Written Leasing Criteria are generally the same document.

Q24. Is there a time limit on the criminal background, meaning how far back can we go and still deny?

A24. The rule does not restrict the timeframe you can use; however, the timeframe that you use must be included in the Tenant Selection Criteria.

Q25. If an applicant is denied due to credit for example they have 13 trade lines and 12 are in collections which is considered high risk do we have to explain what the credit score has to be?

A25. If you are basing the denial on the specifics of the actual credit accounts and not the aggregate credit score, then it would appropriate to state that the denial is based on the number of accounts in collections versus the total number of accounts rather than the actual credit score. You should be detailing why an applicant is denied based on your Tenant Selection Criteria.

Q26. Please clarify the occupancy standards with the age of 6 years.

A26. HUD's notice of reasonable occupancy standards considers the fact that a prescriptive 2 person per bedroom occupancy standard that does not consider the age of young children may be used to unnecessarily exclude families with children. In the revised §10.610, the rule sets a reasonable occupancy standard with the understanding that one size does not always fit all in regards to property needs or local codes. However, there was concern during the public comment process that the proposed rule might be read in a way that would lead Owners and Managers to set occupancy standards for two persons per bedroom, which is not consistent with HUD's "reasonableness" guidance related to young children. This language was included in the rule in response to public comment. Owners and Agents can choose to proceed on the basis of setting a requirement of two persons per bedroom (over the age of six) unless otherwise directed by building code or safety regulations or unless a written justification is provided. TDHCA does not set a maximum requirement for occupancy.

Q27. Beginning in April 2015, will we need to rewrite the criteria to include the new rules?

A27. Yes. An owner must review the criteria and determine whether revisions need to be made to be compliant with the rule. This rule is effective April 1, 2015.

Q28. Are we able to use third party verifications for special accommodations or is the special Needs certification sufficient?

A28. Third party verifications for reasonable accommodations can be used. See the HUD-DOJ Joint Memo on the Fair Housing website for more details: <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>

Q29. Do residents with assistance animals have to pick up pet waste? Residents with service animals are required to sign the pet addendum, so how is that different?

A29. See items 18 and 28 above. Neither assistance nor service animals are considered "pets" under HUD guidance under Section 504 and the Fair Housing Act. Depending on the language of the addendum, it may not be appropriate for a tenant to sign

Q30. VAWA- if police are called out for a domestic violence dispute and the police damage the door frame trying to access the unit, are we allowed to charge the tenant for repairing the damage?

A30. This is a rapidly evolving area of law, and owners are highly encouraged to seek out legal counsel. Legal counsel should consider many factors in addition to VAWA including but not limited to the Fair Housing Act, the recent settlement agreement between HUD and the City of Berlin, NH, and Texas Property Code §92.015.

Q31. We are a Participating Jurisdiction and we have few HOME & CDBG funded properties which are layered with Tax Credit funds too. Now my questions to you: what applies to such properties or what does not when it comes to tenant selection Criteria?

A31. This rule applies to Housing Tax Credit Program (HTC); The HOME Investment Partnerships Program (HOME); The Tax Exempt Bond Program (Bond); The Housing Trust Fund Program (HTF); The Tax Credit Assistance Program (TCAP); The Tax Credit Exchange Program (Exchange); The Neighborhood Stabilization Program (NSP); and Section 811 Project Rental Assistance (PRA) Program.

Q32. We are a post 15 property - do we have to have a waitlist? By not being required to do recertification's - our availability is very limited since we are 100% one program.

A32. Yes. Every property must develop procedures detailing how the Development takes applications and opening, closing, and selecting applicants from the waitlist.

Q33. We are a townhome community, our 2bedroom units (if they are not accessible units) only have the bedrooms & bathroom located upstairs (only common areas downstairs), is this considered an unjust financial burden issue?

A33. This is a very fact specific determination, and the owner should contact a Fair Housing Attorney.

Q34. We are required to list the breed restrictions, pet policy on the rental criteria, correct? Not just the deposit/fees

A34. An owner should have a Pet Policy. The requirement related to the rule is that Tenant Selection Criteria must describe, pet rules, and pet deposits, along with any specific animals, breeds, numbers, and weight that are restricted. The Pet Policy should state that it will not apply to households having a qualified service/assistance animal(s).

Q35. What documents are required to supplement a waiting list, if any?

A35. None; the waitlist should be self explanatory.

Q36. What if a medical provider provides the disability details even though it was not requested? Should a site request a new verification and destroy the original one that disclosed the nature of the disability?

A36. If the medical provider gives details regarding the specific disability, due to privacy issues, you should redact that information so you are not liable for storing private medical information. It is not necessary to obtain a new verification.

Q37. What is the "basic demographic" information that the denied application log must contain?

A37. Basic household demographics are not defined but it could include household size, race and ethnicity. The Owner is to develop procedures to address the manner in which rejections will be handled, including what information should be maintained on the log. If an owner does not currently request basic demographic information as part of the application process, it will not be asked to provide such information on the application log.