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Affirmative Fair Housing Marketing Plan

**Guide for Managing Agents, Owners, and
Developers**

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Understanding Affirmative Fair Housing Marketing

Recipients of federal funds from the U.S. Department of Housing and Urban Development (HUD) are required to comply with the Fair Housing Act (FHA) and its requirements to affirmatively further fair housing (AFFH). The purpose of AFFH is to reduce segregation and encourage integration in housing by promoting fair housing choice regardless of one's protected characteristics under federal and New York State fair housing laws. The Affirmative Fair Housing Marketing Plan (AFHMP) requirement is one part of that effort.

Through its AFHMP, a HCR-funded development indicates what efforts it will undertake to advertise the development to potential applicants who might not otherwise apply for the housing. This requires that the managing agent/owner/developer select a primary housing market area, identify the least likely to apply target populations and design methods to reach out to these populations.

HCR is committed to providing technical assistance to managing agents, owners, and developers to help develop, implement and assess their AFHMP. This manual summarizes AFHMP policy and procedures as required by HCR and provides instructions concerning how to develop an effective AFHMP.

OVERVIEW

NEW YORK STATE HOMES AND COMMUNITY RENEWAL AFFIRMATIVE FAIR HOUSING MARKETING PLAN (AFHMP) POLICY

HCR requires that each multifamily development receiving financial assistance carry out a marketing strategy to attract prospective renters, regardless of race, creed, color, national origin, sexual orientation, military status, sex, gender identity, age, disability, marital status, or familial status.

In addition to general marketing efforts, each development must also engage in an affirmative fair housing marketing program, which provides the opportunity to target specific groups who may need special outreach in order to be made aware of and apply for the housing. These affirmative fair housing marketing efforts are meant to target persons identified as least likely to apply (“LLA”) and make them aware of available affordable housing opportunities.

The creation of an AFHMP can be broken down into the following four (4) areas:

- 1. Targeting:** Identify the racial and ethnic demographic groups within the primary/secondary housing market area which are least likely to apply for housing without special outreach efforts. The primary/secondary housing market area is the area where you will reasonably expect to find tenants who wish to apply for units at the property. This can be a town, village, city, or community board. Once the primary/secondary housing market area is defined, review the demographic information to determine what groups of people living in this area are the least likely to apply to live in the project without actively seeking them out with this marketing plan.
- 2. Outreach:** Once you have identified the groups you need to target, then you must develop an outreach program which includes special measures designed to attract those groups, in addition to other efforts designed to attract persons from the total population. This requires that you identify media outlets and groups that have direct contact with the LLA populations that you are trying to reach. Appropriate community contacts include, but are not limited to, social service agencies, religious bodies, advocacy groups, community centers, and HCR-funded Neighborhood and Rural Preservation Companies.
- 3. Assessment:** Develop a plan for what information you are going to track that will allow you to measure the plan’s effectiveness. Examples of methods that can be used include:
 - Determining if the marketing effort effectively attracted applicants who are from the majority and minority groups, including persons with disabilities and families with children, as represented in the total population of the housing market area.
 - Tracking how many referrals are received from the community contact groups you utilized.
- 4. Staff Training:** Management and sales staff must receive training on federal, State and local fair housing laws. HCR’s Fair and Equitable Housing Office is committed to being a resource for project owners regarding fair housing compliance.

HCR AFHMP GUIDELINES

The following outline identifies areas of significant interest to the agency in its review and approval of marketing plans for finance and development projects. These areas must be addressed by all applicants to the greatest extent applicable in the preparation of a marketing plan for submission, review, and approval.

To submit your project's AFHMP, download and complete the AFHMP Fillable Form, available at <http://www.nyshcr.org/AboutUs/Offices/FairHousing/AffirmativeMarketing.htm>

I. PROJECT IDENTIFICATION & DESCRIPTION

Provide a description of the project including project name and address, number of units, managing agent/owner/developer's contact information, address where correspondence relating to the project should be sent, and identify person and entity responsible for marketing.

Indicate whether the project is (a) new construction, (b) adaptive reuse, (c) rehabilitation, (d) acquisition, (e) site improvement, or (f) remarketing of an existing project.

II. MARKETING PROGRAM & DIRECTION OF MARKETING ACTIVITY

Identify the projected date of initial occupancy, commencement date for affirmative fair housing marketing, and the commencement date for general advertising.

All marketing should be comparable in terms of the description of the housing opportunity available, regardless of marketing type. All marketing materials must include the applicable fair housing logos, including the Equal Housing Opportunity and Accessibility logos. Available at: <http://www.nyshcr.org/AboutUs/Offices/FairHousing/AffirmativeMarketing.htm>.

At least 120 days prior to the date that the project's Certificate of Occupancy is anticipated to be issued, the project must be registered on www.NYHousingSearch.gov, a free service provided by New York State to advertise and search for affordable and accessible housing. The service is also available through a toll-free, bilingual call center at **1-877-428-8844**. Representatives are available to assist with listings and searches.

Prior to commencing marketing in accordance with the approved AFHMP, a Notice of Intent to Market (NOI), along with a draft advertisement, must be submitted to HCR's Fair and Equitable Housing Office (FEHO). The NOI must be submitted at least 120 days prior to the date that the project's Certificate of Occupancy is anticipated to be issued. For HFA-funded projects, a copy of the updated marketing plan shall be submitted to Asset Management and FEHO prior to the pre-occupancy conference. The timeline may be altered depending on source of financing/requirements of program.

Copies of all marketing tools should be attached; for example, advertisements, press releases, brochures, signs, leaflets, websites.

III. DEMOGRAPHICS OF PROJECT'S HOUSING MARKET AREA

Identify the housing market area (town/city/community board) from which the owner/agent intends to draw applicants (hereinafter, "Primary Market Area").

Identify the expanded housing market area (city/county) from which the owner/agent intends to draw applicants to increase the diversity of individuals to be reached by its marketing efforts (hereinafter, "Secondary Market Area").

Use the most recent American Community Survey 5-Year Estimates (www.census.gov) to identify those racial and ethnic demographic groups who are "least likely to apply" (LLA), because those populations are currently underrepresented in the project's Primary Market Area or underrepresented on the waiting list. Populations under 1% do not need to be listed as an LLA population.

Affirmative fair housing marketing should attract applicants outside the community who are underrepresented in the Primary Market Area's demographics. A good marketing strategy will cast a wide net. HCR requires the use of Primary and Secondary Market Area civic organizations, grassroots and religious bodies, labor unions, disability advocates, civic organizations, HCR-funded Neighborhood and Rural Preservation Companies, and/or other groups and individuals in the community that have direct contact with the LLA populations.

The AFHMP must describe development and distribution of leaflets and brochures which are to be produced in English, Spanish and other languages as reflected by the LLA populations.¹ The AFHMP shall include Spanish language marketing material to serve the Spanish-speaking population that is Limited English Proficient ("LEP"). Distribution should include circulation to the organizations and community-based groups serving LLA populations.

Marketing requirements may vary by development size with "small project" developments of 1-4 units and all low-cost measures. Developers of larger developments must conduct all described marketing activities as indicated.

a. Community Contacts

The AFHMP should provide that homeownership² counseling agencies and/or community contacts are to be notified through letters, emails, and/or information packets that include leaflets/brochures, followed by personal contact conducted by the developer or marketing agent.

¹ To address the needs of Limited English Proficient (LEP) population, alternative resources should be sought to address the need, such as opening an account with a "Language Line" or alternative provider that provides 24/7 translators which can be accessed as needed by marketing staff to assist in serving all LEP persons.

² Any AFHMP that includes homeownership must provide that the potential home purchasers receive homeownership counseling and education through a HUD-certified housing counseling agency and may also utilize the housing counseling agency to provide the homeownership counseling. The Owner, Developer, and/or Managing agent may also use the counseling agency to provide the homeownership counseling and education, so long as such services are delivered in accordance with HUD regulations. Housing counseling staff involved in counseling and qualifying residents shall not be involved in marketing activities and the selection of residents.

Upon initiation of the marketing period, a letter must be sent by regular mail or email to each of the homeownership counseling agencies and/or community contacts listed in the AFHMP requesting that they advise their constituencies and clients of the availability of these units and encourage them to take advantage of this housing opportunity.

The AFHMP must describe the follow-up efforts with regard to each letter, such as calls to the contact person to explore the most effective outreach approach to their respective constituencies and clients (*i.e.*, community contact follow up with specific actions, community contact providing a list of names for direct contact or community contact hosting event where the owner, developer, and/or marketing agent may present information to potential applicants).

Correspondence (letter/emails etc.) to be sent to community contacts should be attached to the AFHMP. The AFHMP should also provide for how the abovementioned efforts will be documented, including for example maintenance of call logs and email correspondence.

b. Commercial and Print Media

Advertisements will describe the name and location of the housing development; number of units available; size and purchase prices or monthly rental cost of the units; income requirements; list of building features and amenities; a community profile with resources and features; and contact information for obtaining an application and/or additional information.

Advertisements must include the NYSHCR, Equal Housing Opportunity, and Accessibility logos. Advertisements should also be in the proper language for the target population. Firm date(s) and deadlines for advertising must be documented.

c. Web-based Media

In addition to NYHousingSearch.gov, free housing services sites should be utilized to advertise the Development.

The AFHMP must anticipate that information on the development will be posted on Developer's or Project Owner's website, and other social media outlets if such exist. It is expected that NYSHCR may also post links to such information on its social media outlets upon being provided with the materials in electronic format. The AFHMP must provide that the Developer will request community contacts and other outlets to distribute information through their social networks.

IV. SET-ASIDE UNITS FOR SPECIAL NEEDS POPULATIONS

Special Needs set-aside units are units specifically reserved for individuals identified as an HCR-designated special population. An experienced service provider shall refer prospective tenants with special needs to the project and provide supportive services pursuant to the written agreement approved by HCR.

For the Special Needs set-aside units, the Owner, Developer, and/or Marketing Agent must affirmatively identify sources of referrals and establish linkages with local agencies or groups prior to the initial project rent-up for the ongoing referral of occupants to these units.

Records of correspondence with supportive service provider(s) must be available on-site to document compliance with appropriate outreach for the units these units pursuant to the approved written agreement.

V. COMMUNITY PREFERENCES

a. Local Preference

Indicate if the project requests a community residency preference. If a local community preference is sought:

- i. Describe the geographic scope³ of the community preference.
- ii. State the reason for the requested preference. For example, what is the documented need for the community preference?
- iii. Describe the extent of the preference (*i.e.*, will the preference be effective only at initial lease-up; what percentage of units will be set aside for the preference).
- iv. Provide demographic information⁴ supporting that the proposed preference would not have a discriminatory effect on protected classes in violation of the Fair Housing Act and New York State Human Rights Law.⁵

b. Municipal Worker Preference

If a municipal worker preference is requested,

- i. Describe the scope of the municipal worker preference.
- ii. State the reason for the requested preference.
- iii. Describe the extent of the preference (*i.e.*, will the preference be effective only at initial lease-up; what percentage of units will be set aside for the preference).
- iv. Provide demographic information⁶ supporting that the proposed preference would not have a discriminatory effect on protected classes in violation of the Fair Housing Act and New York State Human Rights Law.⁷

³ Durational requirements are not permitted under any circumstances. (*i.e.*, applicant must be a resident for a certain time frame.)

⁴ Appropriate documentation includes, but is not limited to, the most recent American Community Survey 5-Year Estimates for the geographic area receiving the occupancy preference and the surrounding geographic areas from where likely applicants are reasonably expected to reside.

⁵ HCR's approval of a project's AFHMP that contains a tenant selection preference is not intended to establish or to serve as legal advice. Through its approval of a project's AFHMP, HCR is not providing its imprimatur of legality concerning the project's tenant selection preference or policies. It should be noted that local residency preferences—even when not intentionally discriminatory—may in practice deny equal housing opportunity or perpetuate segregation without justification and thus be prohibited by the Fair Housing Act and the New York State Human Rights Law.

⁶ See *supra* note 5.

⁷ See *supra* note 6.

c. Other Type of Preference

Identify any other requested preference and provide responses to the following questions:

- i. Describe the type and scope of the preference.
- ii. State the reason for the requested preference.
- iii. Describe the extent of the preference (*i.e.*, will the preference be effective only at initial lease-up; what percentage of units will be set aside for the preference).
- iv. Provide demographic information⁸ supporting that the proposed preference would not have a disparate impact on protected classes in violation of Fair Housing Act and New York State Human Rights Law.⁹

d. Veterans Preference (Mitchell-Lama projects/Article 2 Housing Companies)

New York Private Housing Finance Law § 31 broadens the Mitchell-Lama regulations and allows for preferences to be given to all veterans or their surviving spouses, who served on active duty in time of war, as defined in New York Civil Service Law § 85. Veterans/spouses must reside in New York State.

For open waiting lists, this preference should be implemented immediately. For waiting lists that have been closed in accordance with 9 N.Y.C.R.R. § 1727-1.4(a), this preference should be implemented when the list is re-opened.

A veteran's preference will be afforded to applicants on admission waiting lists who previously qualified for the disabled veteran preference (*see* MBM #2007-B-08) and process their applications before those of admission applicants who do not qualify for a preference or priority.

This preference is applicable to all former Mitchell-Lama projects as well.

VI. TENANT SELECTION PROCEDURES

a. Lottery

The initial selection process must be made on a random basis through the use of a lottery and not on a first-come first-served basis with certain exceptions. (*e.g.*, when full rent-up of the premises is expected to take in excess of six months or if the project is occupied and rehabilitation will occur with tenants in place.)

HCR does not permit application fees, credit report fees or any other fees to be charged to applicants.¹⁰ Lottery notice and applications must be available in English, Spanish and other languages as reflected by the LLA populations.

⁸ *See supra* note 5.

⁹ *See supra* note 6.

¹⁰ Projects funded by the NYS Housing Finance Agency (HFA) may charge credit check fees up to \$50 for households of three (3) or more.

The lottery should be conducted at a previously announced date and time and at an accessible public/community facility that is reasonably accessible to public transportation.¹¹ All applicants should be informed of the date, time, and location of the lottery drawing, and invited and encouraged to attend. Included in the description of the lottery is the procedure to draw and announce those selected through the lottery. For example, each applicant's name will be announced as their name is drawn and their information will be entered in a lottery database in sequential order.

The AFHMP must provide for the method of notification of applicants of their lottery status. For example, applicants may be notified of their lottery ranking by telephone and U.S. mail, or whatever other means of notification has been requested by the applicant and accepted by the Owner, Developer, or Marketing Agent.

The AFHMP must describe the steps to process the applications in lottery order, and that this work will be conducted by trained and experienced staff of the Owner, Developer, or Marketing Agent. This description should explain the process to identify any information or documentation that is either missing or needs to be updated in the application, process to contact applicant to request such information, and timeframe the applicant must respond. For example, applicants are given seven days in which to provide this information.

Describe steps to be taken if an applicant either withdraws or is deemed ineligible. For example, he or she will be informed of such by a letter from the Owner, Developer, or Marketing Agent of their status as ineligible or acknowledgement of withdrawal. The AFHMP must also provide applicants who do not submit complete applications an opportunity to cure before the lottery takes place.

Detail what will be done with the applications of any qualified applicants in excess of the number of available units. For example, they could be put on a waiting list in the order in which their names were selected during the lottery, and on a first come, first served basis after all the lottery-drawn names have been exhausted, as provided in the above; or receive notification of future marketing.

Detail efforts that will be undertaken by the Owner, Developer, or Agent to ensure the confidentiality of the information provided by applicants, especially with respect to sensitive and personal information (examples include criminal records, disability status and child support payments).

Links to the application or the electronic application form must be provided to NYSHCR so that it can be made available on NYSHCR's website, if appropriate. Indicate the application period and when it will close. Include instructions to applicants of who to submit applications to, the location and deadline for application submission. The application must be available upon initiation of the marketing program.

The AFHMP should anticipate posting the application on the Owner, Developer, and/or

¹¹ Projects that utilize the NYC Housing Connect system are exempt from the HCR requirement that the lottery take place in a location open to the public.

Managing Agent's website, as well as the Housing Development-specific website, if applicable.

b. Tenant Eligibility

State the target income ranges as defined by HCR/HUD and adjusted for household size for all affordable units.

Describe how tenant eligibility will be determined. (*e.g.*, income certification, employment verification, creditworthiness, background check.) It should be noted that when conducting a background check of an applicant, the housing provider must use a reputable background check company. Further, the housing provider must comply with the requirements of the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 *et. seq.*

Records about tenant selection or rejection (including copies of all rejection letters) must be kept in the project file.

Detail the appeals process for an applicant who is denied admission. Specifically, how is the tenant notified of the reason for their denial; how is the tenant notified of their right and the process to appeal; and what is the timeline for requesting and resolving appeals.

Indicate name and staff position responsible for tenant selection and appeals process (this should be two different staff persons/positions).

c. Assessing Applicants With Criminal Convictions

HCR prohibits its housing providers from utilizing tenant selection procedures with blanket exclusions of applicants based on their criminal history. Tenant selection procedures may only consider convictions or pending arrests for offenses that involved physical danger or violence to persons or property or that adversely affected the health, safety and welfare of other people.

Even where convictions for such offenses exists, those convictions cannot be an automatic bar to the applicant being selected for housing. The housing provider must do an individualized assessment of all applicants pursuant to HCR's Guide, Worksheet and Webinar Tutorial for Applying New York State's Anti-Discrimination Policies When Assessing Applicants for State-Funded Housing Who Have Criminal Convictions.

(<http://www.nyshcr.org/AboutUs/Offices/FairHousing/GPCC.htm>)

Additionally, the housing provider must provide the applicant with an application that includes information that explains the procedures and policies with regard to background checks, the applicant's right to review, contest, and explain the information contained in the background check, and the applicant's right to present evidence of rehabilitation.

d. Compliance with the Violence Against Women Act (“VAWA”)

Under VAWA, potential tenants and current tenants who are victims of domestic violence, dating violence, sexual assault, or stalking cannot be denied tenancy or evicted as a result of an incident of domestic violence, dating violence, sexual assault, or stalking that is reported and confirmed. These protections extend to women, men, and people in same-sex relationships.

The owner/manager must provide a VAWA notice of rights to tenants at the time a person applies for housing, when a person is denied tenancy, and when an applicant signs a lease agreement. The owner/manager must also implement a VAWA lease addendum for all current and new tenants.

Additional information concerning the owner/manager’s obligations and protections under VAWA is available at www.nyshcr.org/aboutus/offices/fairhousing/.

VII. ACCESSIBILITY POLICIES OF MANAGEMENT

a. Reasonable Accommodations

Describe the process and timeline concerning how requests for reasonable accommodations will be handled. Also indicate who will be authorized to approve or deny any such requests. State the policies and procedures that will be used to verify an applicant’s disability—noting that such information will be limited to only that which is needed to determine the reasonableness of a particular accommodation.

Describe management’s written policy for persons with disabilities that require service animals and/or assistance animals.

Describe any procedures established to accommodate hearing and sight impaired applicants and tenants. (*i.e.*, readers, sign language, interpreters, and Braille materials.) State whether the project has a Telecommunication Device for the Deaf (TDD) or an equally effective communication system? (Note: If the complex has Section 8 assistance from HUD, the complex is required to have a TDD.)

b. Fully Adapted Units

Fully-accessible and adapted, move-in-ready units should be reserved for persons with mobility, hearing and/or visual disabilities.

The AFHMP should provide that community contacts that directly serve persons with mobility, hearing and/or visual disabilities are to be notified through letters, emails, and/or information packets that include leaflets/brochures, followed by personal contact conducted by the developer or marketing agent.

Upon initiation of the marketing period, a letter must be sent by regular mail or email to each of the community contacts listed in the AFHMP requesting that they advise their constituencies and

clients of the availability of these units and encourage them to take advantage of this housing opportunity. The letter must indicate the number and type of fully-accessible and adapted, move-in-ready units the project will provide.

The AFHMP must describe the follow-up efforts with regard to each letter, such as calls to the contact person to explore the most effective outreach approach to their respective constituencies and clients.

Correspondence (letter/emails etc.) to be sent to community contacts should be attached to the AFHMP.

VIII. SMOKING POLICY

Indicate if the project is smoking or non-smoking. Describe the policy to be implemented, and attach a copy of any policies or written materials concerning non-smoking rules and/or any lease addendums.

If non-smoking, indicate in all marketing and community outreach materials that this is a non-smoking facility and add the “No Smoking” logo to all marketing materials. Also indicate if there will be a smoking area provided outdoors.

IX. AFFIRMATIVE FAIR HOUSING MARKETING & RECORD KEEPING

All advertising and records of dates of publication shall be kept on file in the project’s management office. A copy of the AFHMP will be kept on file for future auditing purposes and a copy provided to the Managing Agent.

All staff Fair Housing training certificates must be kept on file for five years and should be attached to the AFHMP submitted to FEHO for approval.

Records of outreach to special interest groups, LLA media and community contacts, and agencies providing referrals shall be kept on file in the project’s management office.

All records of the Lottery Log, Applicant Wait List and Transfer Wait List (if applicable) shall be kept on file.

Voluntary data regarding race, ethnicity, disability, and family composition should be collected and kept in the project file.

X. EVALUATION OF MARKETING ACTIVITIES

AFHMPs should be reviewed on an annual basis to determine if changes should be made. Furthermore, AFHMPs must be updated every five (5) years to fully capture demographic changes in the housing’s primary market area.

Describe how the success of the affirmative fair housing marketing efforts will be evaluated.

Include a discussion of corrective measures to be taken if LLA populations are poorly represented at the project.

XI. FAIR HOUSING EXPERIENCE/TRAINING

All management or sales staff must receive training on federal, New York State, and local fair housing laws. The Developer, Marketing Consultant, Property Manager and/or Marketing Agent will instruct their employees and agents (orally and in writing) concerning nondiscrimination in housing. These employees and agents will attend workshops on fair housing. Attach any evidence of trainings. (*i.e.*, certificates)

Identify any fair housing training conducted for, or attended by, the managing agent, owner or developer. Also identify training regarding project's tenant selection guidelines in accordance with the project's occupancy policies. If the staff has not been trained, indicate when and what future trainings are planned (including any Section 504/reasonable accommodation trainings). Training should include federal, New York State and local fair housing laws and regulations.

XII. CONTINUED COMPLIANCE AND MODIFICATION OF THE AFHMP

The AFHMP shall state that the Property Owner and its Agents are responsible for implementing the entirety of the AFHMP, as approved by the HCR. The AFHMP should also state that the Property Owner and its Agents further agree to comply with any changes required by HCR, as it may be amended from time to time to ensure continued compliance with federal and New York State requirements.

Any changes will require that the Property Owner or its Agents submit an amendment to the AFHMP to HCR for approval.

XIII. ACKNOWLEDGEMENT AND CERTIFICATION

The AFHMP must be signed by an authorized official of the Property Owner and, if a Marketing Agent or Property Management agency is to be involved, by these entities as well.

The signatories assume responsibility for the AFHMP's implementation and agree to make any changes which may be required to assure continued compliance with the affirmative fair housing marketing regulations, as well as all applicable federal, New York State, and local fair housing provisions. These obligations are to be incorporated into any future agreements related to the sale or transfer of the housing binding a new or subsequent owner.

XIV. DISCLAIMER

The obligation to ensure that the project's AFHMP complies with all applicable federal, New York State, and local fair housing laws and regulations lies with the Owner, Developer, and/or Managing Agent. HCR's approval of the project's AFHMP is not intended to establish or to serve as legal advice.

In consideration of HCR approving the project's AFHMP allowing the Owner, Developer, and/or Managing Agent to market the project, the Owner, Developer, and/or Managing Agent agree to hold HCR harmless from all liabilities, damages, costs or expenses (including but not limited to reasonable attorneys' fees and other litigation costs and expenses) incurred for any alleged violations of federal, New York State, and/or local fair housing laws and regulations which arise during or result from the implementation of the project's AFHMP, regardless of whether or not caused in whole or part by the negligence or other fault of HCR.