

**NEW YORK STATE HOUSING FINANCE AGENCY
FAIR HOUSING AND TENANT SELECTION GUIDELINES**

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1. Definitions

- 1.1 “Agency” means the New York State Housing Finance Agency.
- 1.2 “Applicable Rules” means all applicable state, federal or local tenant selection, fair housing and/or antidiscrimination statutes, rules or ordinances in effect from time to time, including rules applicable to specific state, federal or local programs to which the Participating Owner or the Assisted Project or Existing Project may be subject and specifically including the following statutes and regulations related thereto (including any amendments and supplements thereto):
 - 1.2.1 Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and the implementing regulations at 24 CFR Part 1;
 - 1.2.2 The Fair Housing Act (42 U.S.C. § 3601 – 3619) and the implementing regulations at 24 CFR Parts 100, 108, 109, and 110;
 - 1.2.3 Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR Part 107;
 - 1.2.4 Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and the implementing regulations at 24 CFR Part 8;
 - 1.2.5 The Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 – 6107) and the implementing regulations at 24 CFR Part 146;
 - 1.2.6 The Americans with Disabilities Act (42 U.S.C. §§ 12101 – 12213) to the extent applicable; and
 - 1.2.7 Applicable state or local laws and ordinances, including, without limitation, the New York Human Rights Law, N.Y. Executive Law § 290 et seq.
- 1.3 “Assisted Project” means any multifamily or other housing project that receives financing or financial assistance through or with the assistance of the Agency, except that it shall exclude Existing Projects (as defined below).
- 1.4 “Existing Project” means any multifamily or other housing project that has received financing or financial assistance through or with the assistance of the Agency and that has already received approval of its Tenant Selection and Marketing Plan as of the date of issuance of these Guidelines.
- 1.5 “Guidelines” means these Fair Housing and Tenant Selection Guidelines, as the same may be amended, modified or supplemented from time to time.

- 1.6 “Participating Owner” means an owner of an Assisted Project or an Existing Project, as applicable and includes all agents, employees, sub-contractors and assignees of the Participating Owner.
- 1.7 “Tenant Selection Plan” means the document to be prepared pursuant to Section 2.1.3 hereof.

2. **Fair Housing Commitment**

2.1 Assisted Projects

2.1.1 All Participating Owners, as a condition for receiving financing or other financial assistance from the Agency, commit to observe and comply with all Applicable Rules and to hold the Agency harmless for any violation of the Applicable Rules by the Participating Owner or Assisted Project.

2.1.2 To the extent they have not already done so, all Participating Owners shall prepare and implement an Affirmative Fair Housing Marketing Plan in the form and with the content required by 24 CFR Part 108 and §§ 200.600 et seq. with respect to each Assisted Project. Such plans shall be filed with the Agency no later than the date of mailing of the Official Statement or (if applicable) Preliminary Official Statement, whichever is earlier. Such plans shall be revised and updated as required by applicable law and Participating Owners shall submit any such revised plan to the Agency within thirty (30) days following any revision or update to the applicable law.

2.1.3 All Participating Owners shall prepare and implement a Tenant Selection Plan for each Assisted Project. The contents of the Tenant Selection Plan shall comply with Parts 3 and 4 hereof, and such plan shall be filed with the Agency on or prior to the date of mailing of the Official Statement or (if applicable) Preliminary Official Statement, whichever is earlier. Such plans shall be revised and updated as required by applicable law and Participating Owners shall submit any such revised plan to the Agency within thirty (30) days following any revision or update to the applicable law. On or prior to the date of mailing of the Official Statement or (if applicable) Preliminary Official Statement, whichever is earlier, all Participating Owners shall execute and deliver to the Agency a certification (on a form or other method supplied by the Agency) stating that the Tenant Selection Plan is in compliance with the Guidelines and the Applicable Rules.

2.1.3.1 The filing with the Agency of the Affirmative Fair Housing Marketing Plan and Tenant Selection Plan shall not constitute an acknowledgment by the Agency (express or implied) that such Plans are in compliance with all Applicable Rules, nor create any liability on the part of the Agency for any breach of Applicable Rules by the Participating Owner.

2.1.4 *Reporting and Recordkeeping.*

- 2.1.4.1 On or before December 31 each year, using a form or other method supplied by the Agency, each Participating Owner shall deliver a sworn certification, under pain of perjury and based on reasonable inquiry, with respect to each Assisted Project, which, among other matters --
 - 2.1.4.1.1 States that the Assisted Project and the Participating Owner are in compliance with their obligations under the Applicable Rules and that they have prepared and implemented an Affirmative Fair Housing Marketing Plan and a Tenant Selection Plan, have revised and updated those Plans to the extent required by law, and have filed a copy of the Plans (and any revisions thereto) with the Agency pursuant to the deadlines established by the Guidelines; and
 - 2.1.4.1.2 Includes a list of all complaints, investigations or other administrative inquiries or actions with respect to the compliance of the Assisted Project or Participating Owner with the Applicable Rules.
- 2.1.4.2 Within seven business days of receipt or service thereof, the Participating Owner shall deliver to the Agency via certified mail, return receipt requested:
 - 2.1.4.2.1 Any judicial or administrative complaint alleging a violation of the Applicable Rules with respect to any Assisted Project and/or Participating Owner;
 - 2.1.4.2.2 Any complaint by a current tenant or an applicant applying for tenancy alleging a violation of any Applicable Rules with respect to any Assisted Project and/or Participating Owner;
 - 2.1.4.2.3 Any answer or other response to any such complaint described in Sections 2.1.4.2.1 or 2.1.4.2.2;
 - 2.1.4.2.4 Any settlement, enforcement agreement, conciliation agreement or charge related thereto; and
 - 2.1.4.2.5 Any other notice, inquiry, demand or request from any entity with respect to the compliance of the Assisted Project and/or Participating Owner with the Applicable Rules.
- 2.1.4.3 Failure to deliver on a timely basis any document required pursuant to this Section 2.1 hereof shall constitute an Event of Default under the applicable documents with respect to the subject Assisted Project, subject to and in accordance with all applicable notice and cure periods under such documents.

2.2. *Existing Projects*

2.2.1 Participating Owners of Existing Projects shall --

2.2.1.1 Observe and comply with all Applicable Rules and shall hold the Agency harmless for any violation of the Applicable Rules by the Participating Owner or Existing Project;

2.2.1.2 On or before December 31 each year, on a form or other method supplied by the Agency, deliver a sworn certification, under pain of perjury and based on reasonable inquiry, with respect to each Existing Project, that states, among other things, that their previously-adopted marketing and tenant selection plans, as amended, if applicable, for such Existing Projects comply with all Applicable Rules;

2.2.1.3 Provide the Agency on a timely basis with a copy of any amendment or revision to their previously-adopted marketing or tenant selection plans for such Existing Projects; and

2.2.1.4 Provide the documents identified in section 2.1.4 hereof, with respect to their Existing Projects, on the timetables specified therein.

2.2.2 Failure to deliver on a timely basis any document required pursuant to this Section 2.2 hereof shall constitute an Event of Default under the applicable documents with respect to the subject Existing Project, subject to and in accordance with all applicable notice and cure periods under such documents.

3. **Tenant Selection Policies in Tenant Selection Plans.**

3.1 Tenant Selection Plans for all Assisted Projects shall comply with the following guidelines.

3.1.1 Other Applicable Statutes, Rules and Ordinances. To the extent that there is any inconsistency between these Guidelines and the Applicable Rules, the Applicable Rules shall govern.

3.1.2 The Agency reserves its right to require or prohibit conduct by Participating Owners to (a) comply with the Guidelines and/or (b) otherwise promote the goal of providing affordable housing on a nondiscriminatory basis.

3.2. *Selection policies.*

3.2.1 The Participating Owner shall establish and adopt written policies for admission of individuals of low income. Low-income individuals are defined by the Agency in the Regulatory Agreement for the particular project. In lieu of drafting a tenant selection plan pursuant to Part 4.0 hereof, the Participating Owner may utilize the

tenant selection plan adopted by the local public housing agency (“PHA”), as approved by HUD; provided that such plans have been adopted and approved within the last year. With respect to selection of market rate tenants, Project Owners shall comply with all Applicable Rules.

3.2.2 These policies shall be designed:

3.2.2.1 To assure that anyone admitted as a tenant to an Assisted Project meets the income qualifications established by the Agency and the rules of other applicable subsidy sources.

3.2.2.2. To preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment;

3.2.2.2 To establish objective and reasonable policies for selection by the Participating Owner among otherwise eligible applicants.

3.2.3 The Participating Owner’s tenant selection policies shall comply with all Applicable Rules and shall include the following:

3.2.3.1 Requirements for applications and waiting lists (see 24 CFR §1.4);

3.2.3.2 Description of the policies for selection of applicants from the waiting list;

3.2.3.3 Policies for verification and documentation of information relevant to acceptance or rejection of an applicant, including income and asset verification, documentation and verification of citizenship and eligible immigration status under 24 CFR part 5.

3.2.4 These selection policies shall:

3.2.4.1 Be duly adopted; and

3.2.4.2 Be distributed in summary form to applicants at the time they receive an application and to tenants, upon their request, in sufficient detail to allow the recipient to understand (1) the policies used by the Participating Owner to select tenants; (2) how those policies apply to individual applicants or tenants; (3) how the tenant selection process works (including the operation of waiting lists); and (4) the rights of the applicant, in the event their application is rejected (including, with respect to compliance with the Applicable Rules, the address and telephone number of the local office of the New York State Division of Human Rights). Such summary form shall be filed with the Agency.

- 3.2.5 Such policies shall be filed with the Agency no later than the date of mailing of the Official Statement or (if applicable) Preliminary Official Statement, whichever is earlier, and, at a minimum, shall contain the following principal sections:
 - 3.2.5.1 Identification of the applicable housing market area or other relevant geographic and market information;
 - 3.2.5.2 Information concerning advertising and marketing strategies, including scripts and other advertising copy (reflecting information concerning the number of available units and tenant income qualifications) and schedules showing the date and media outlet/s for such advertising;
 - 3.2.5.3 The Project's tenant selection policies, including (a) threshold criteria such as income, student status, etc.); (b) suitability criteria; and (c) any owner preferences, all of which shall comply with these Guidelines and the Applicable Rules;
 - 3.2.5.4 The Project's selection process, including intake mechanism, evaluation procedures, procedures for notification of acceptance or rejection (including statements of appeal rights) and waiting list operations; and
 - 3.2.5.5 Such other information as may be necessary to fairly disclose the Project's tenant selection process.
- 3.3 *Prohibited Provisions.*
- 3.3.1 Tenant Selection Plans shall not contain any policy or provision that would constitute a violation of any Applicable Rules.
- 3.4 *Reservation to Revise Guidelines*
- 3.4.1 The Agency expressly reserves the right to amend, rescind, supplement, modify or otherwise revise prospectively any portion of these Guidelines, in whole or in part, at any time at its sole discretion.
- 4. **Standards for Tenant Selection Policies For Assisted Projects.**
- 4.1 *All Tenant Selection Plans shall be drafted to comply with the following:*
 - 4.1.1 The tenant selection policies to be established and information to be considered in connection with a Tenant Selection Plan shall be reasonably related to individual attributes and behavior of an applicant and shall not be related to those which may be imputed to a particular group or category of persons of which an applicant may be a member.

4.1.2 In selection of households for admission to an Assisted Project, or to occupy a unit in an Assisted Project, the Participating Owner is responsible for screening household behavior and suitability for tenancy. The Participating Owner may consider all relevant information, which may include, but is not limited to:

- 4.1.2.1 An applicant's past performance in meeting financial obligations, especially rent;
- 4.1.2.2 A history of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences which may adversely affect the health, safety or welfare of other tenants; and
- 4.1.2.3 A history of criminal convictions that involved physical violence to persons or property, or that adversely affected the health, safety or welfare of other people. The Owner may not reject a proposed household based solely on the fact that a household member has such past convictions but must conduct an individualized assessment of each proposed household member with such past convictions, taking into account:
 - a) the time which has elapsed since the occurrence of the criminal conviction or convictions;
 - b) the age of the person at the time of occurrence of a criminal offense or offenses; and
 - c) the seriousness of the offense or offenses.
 - d) any information produced by the proposed household member or produced on his or her behalf, in regard to rehabilitation and good conduct, including, but not limited to, evidence of completion of treatment, rehabilitative programming, history of employment and tenancy, volunteer or community activity, and letters of reference from employers, landlords, community members or others who could speak to the household member's conduct since the conviction.

If, after conducting this assessment, the Owner determines that the household is not suitable it must be able to articulate its reasoning with specificity. It shall communicate its decision to the applicant, together with the reasons for its determination.

4.1.3 In the event of the receipt of unfavorable information listed in 4.1.2.1 and 4.1.2.2 (excepting criminal convictions), consideration shall be given to the time, nature, and extent of the applicant's conduct and to factors which might indicate a reasonable probability of favorable future conduct or financial prospects. For example:

- 4.1.3.1 Evidence of rehabilitation, including:
 - a) any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct;
 - b) the person responsible for the prohibited action demonstrates successful completion of a credible rehabilitation program; or
 - c) for a violation stemming from the use or abuse of drugs or alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents, the person demonstrates to the Participating Owner's satisfaction that the person is no longer engaging in the drug or alcohol-related activity;
- 4.1.3.2 Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs and the availability of such programs;
- 4.1.3.3 Evidence of the applicant family's willingness to attempt to increase family income and the availability of training or employment programs in the locality.
- 4.1.3.4 Selection for particular unit. In selecting a household to occupy a particular unit, the owner may match family characteristics with the type of unit available, for example, number of bedrooms. If a unit has special accessibility features for persons with disabilities, the owner must first offer the accessible unit to families which include persons with disabilities who require such features.
- 4.1.3.5 Housing assistance limitation for single persons. A single person who is not an elderly or displaced person, a person with disabilities, or the remaining member of a resident family may not be provided a housing unit with two or more bedrooms, unless a waiver is granted by the Agency.
- 4.1.4 Particular owner preferences. To the extent a Participating Owner adopts preferences in its tenant selection policies, the Participating Owner must inform all applicants about available preferences and must give applicants a reasonable opportunity to show that they qualify for available preferences.
 - 4.1.4.1 Residency requirements or preferences.
 - 4.1.4.1.1 Residency requirements are prohibited. Although the Participating Owner is not prohibited from adopting a residency preference, the Participating Owner may only adopt or implement residency preferences in accordance with these Guidelines and the Applicable Rules.

- 4.1.4.1.2 A residency preference is a preference for admission of persons who reside in a specified geographic area (“residency preference area”). The residency preference must be included and separately identified in the tenant selection plan.
- 4.1.4.1.3 An owner's residency preference must be approved in one of the following methods:
 - 4.1.4.1.3.1 Prior approval by HUD (pursuant to 24 CFR § 5.655(c)(iii)) of the housing market area in the Affirmative Fair Housing Marketing plan (in accordance with 24 CFR §§ 108.25 and 200.600 et seq., as amended or renumbered) as a residency preference area;
 - 4.1.4.1.3.2 Prior approval (pursuant to 24 CFR § 5.655(c)(iii)) of the residency preference area in the public housing agency (“PHA”) plan of the jurisdiction in which the project is located;
 - 4.1.4.1.3.3 Modification of the Affirmative Fair Housing Marketing Plan, in accordance with 24 CFR §108.25 and 200.600 et seq., as amended or renumbered.
 - 4.1.4.1.3.4 To the extent a Participating Owner is not required to submit an Affirmative Fair Housing Marketing plan to HUD (or other designated Agency) with respect to an Assisted Project, the Participating Owner shall prepare and file an Affirmative Fair Housing Marketing plan (in accordance with 24 CFR §108.25 and 200.600 et seq.) with the Agency. The Participating Owner shall be solely responsible for assuring that such Affirmative Fair Housing Marketing Plan complies with all Applicable Rules.
 - 4.1.4.1.4 Use of a residency preference may not have 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.
 - 4.1.4.1.5 A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.
 - 4.1.4.1.6 Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The owner may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of

the residency preference area if the education or training program is designed to prepare individuals for the job market

- 4.1.4.2 Preference for working families (applicable to non-elderly projects only).
 - 4.1.4.2.1 The owner may adopt a preference for admission of working families in accordance with and subject to all Applicable Rules. The term “working family” shall apply to a family where there is one adult (head of household, a spouse, or other single adult family member) employed for remuneration. However, an applicant shall be given the benefit of the working family preference if the head of household, spouse, or sole member, is age 55 or older, or is a person or is the primary caretaker of a person with disabilities residing in the household.
 - 4.1.4.3 Preference for person with disabilities. The owner may adopt a preference for admission of families that include a person with disabilities. However, the owner may not adopt a preference for admission of persons with a specific disability other than the preference stated in Section 4.1.3.4.
 - 4.1.4.4 Preference for victims of domestic violence. The owner may adopt a preference for admission of families that include victims of domestic violence.
 - 4.1.4.5 Preference for single persons who are elderly, displaced, homeless or persons with disabilities over other single persons. The owner may adopt a preference for admission of single persons who are age 55 or older, displaced, homeless, or persons with disabilities over other single persons.
 - 4.1.4.6 An owner may adopt preferences other than those stated here, if (a) the preference is stated in its written tenant selection policies and (b) the preference is consistent with the Applicable Rules.
- 4.1.5 Waiting lists selection method.
- 4.1.5.1 The Participating Owner must use the following to select among applicants on the waiting list with the same priority for admission: (i) Date and time of application; or (ii) A drawing or other market standard random choice technique.
 - 4.1.5.2 The method for selecting applicants must leave a clear audit trail that can be used to verify that each applicant has been selected in

accordance with the method specified in the Assisted Project's marketing and tenant selection plans.