

HUD Issues Notice on Admissions Preferences for Homeless Individuals and Families

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On July 25, 2013, HUD issued Notice H 2013-21 (Notice),¹ which provides guidance on how property owners of project-based Section 8 housing can adopt admissions preferences for homeless individuals and families. Given the shortage of safe, affordable, and decent housing, a federally assisted housing provider's decision to adopt any sort of admissions preference can have wide-reaching ramifications for individuals and families seeking a place to live. This article provides an overview of the recent HUD Notice, which clarifies HUD's previous position concerning who can qualify for a homelessness preference.

Admissions Preferences

An "admissions preference" provides a housing applicant some sort of priority to receive housing before other applicants based on a particular applicant characteristic, such as being homeless. However, such preferences do not create eligibility for persons otherwise ineligible to reside in federally assisted housing. HUD regulations governing the project-based Section 8 program list a series of admissions preferences, including: residency preferences,² preferences for working families,³ preferences for the disabled,⁴ preferences for victims of domestic violence,⁵ and preferences for "for single persons who are elderly, displaced, homeless or persons with disabilities over other single persons."⁶ The last category, which allows for a preference for "single persons" experiencing homelessness, is the subject of the Notice.⁷

Admissions Preferences May Now Include Homeless Families

The Notice clarifies HUD's previous interpretation of the project-based Section 8 regulations—specifically,

who can qualify for the homelessness preference. Previously, HUD's Office of Multifamily Housing Programs had read 24 C.F.R. § 5.655(c)(1)-(c)(5) very narrowly, meaning that owners could not adopt admissions preferences for homeless *families*, even though a preference for a *single* person experiencing homelessness was permitted. HUD has since broadened its interpretation of the regulation at issue, and now holds the position that owners may adopt admissions preferences beyond those explicitly listed in the regulation.⁸ Thus, even though the regulation does not specifically name homeless families as eligible for an admissions preference, such a preference is now permissible with HUD approval.⁹

Definition of "Homeless"

In determining whether a client can benefit from an admissions preference for homeless persons and families, advocates can begin their analysis by learning HUD's definition of "homeless." In 2011, HUD issued a final rule implementing previous federal legislation¹⁰ that defines "homeless" persons as those falling into one of four categories: (1) persons or families "who lack a fixed, regular, and adequate nighttime residence," including individuals who have resided in a temporary emergency shelter; (2) persons and families "who will imminently lose their primary nighttime residence;" (3) "unaccompanied youth and families with children and youth" who are defined as homeless in other federal statutes but do not fall under this definition; and (4) "individuals and families who are fleeing, or are attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions" related to violence against a person or family member.¹¹

Under the Notice, owners are not bound by the above definition of "homeless." In fact, owners may narrow or broaden their definition of "homeless" in administering an admissions preference for homeless persons or families.¹² Owners must receive approval for owner-adopted definitions of "homeless" from the local HUD field office.¹³

⁸HUD Notice at 1.

⁹*Id.*

¹⁰Homelessness Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009, Pub. L. No. 111-22, Div. B, § 1001, 123 Stat. 1632, 1663 (2009).

¹¹Homeless Emergency Assistance and Rapid Transition to Housing: Defining "Homeless," Final Rule, 76 Fed. Reg. 75,994, 75,995 (Dec. 5, 2011) available at: www.gpo.gov/fdsys/pkg/FR-2011-12-05/pdf/2011-30942.pdf (listing four definitions of homelessness in preamble).

¹²HUD Notice at 2, stating: "The definition of homeless under the HEARTH Act, however, does not prohibit an owner from establishing an alternative definition of homeless for the purpose of a waiting list preference based on local need. Owners may elect to adopt a more narrow definition specific to the homeless needs in their community or a broader version that would serve more of the population."

¹³HUD Notice at 2.

¹Implementation and Approval of Owner-Adopted Admissions Preferences for Individuals or Families, H 2013-21 (July 25, 2013) [hereinafter HUD Notice] available at portal.hud.gov/huddoc/13-21hsgn.pdf

²24 C.F.R. § 5.655(c)(1).

³*Id.* at § 5.655(c)(2).

⁴*Id.* at § 5.655(c)(3).

⁵*Id.* at § 5.655(c)(4).

⁶*Id.* at § 5.655(c)(5).

⁷Specifically, the regulation states that an owner may "adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or persons with disabilities over other single persons." *Id.*

Considerations for an Owner-Adopted Preference

In adopting an admissions preference, the recent HUD Notice lists a series of considerations owners must make:

- The Notice reminds owners that an admissions preference would not make persons who would not be otherwise eligible for federally assisted housing eligible.¹⁴ Additionally, the Notice also states that owners must tell every applicant about all admissions preferences used at the property, and permit each applicant to demonstrate that he or she qualifies for a preference.¹⁵ Owners must also alert persons on an admissions waitlist that such an admissions preference is available.¹⁶
- The use of an admissions preference must be detailed in both the property's Tenant Selection Plan and any required Affirmative Fair Housing Marketing Plan.¹⁷
- The owner should consider whether the property will, as discussed above, adopt the HUD definition of "homeless" or create an owner-adopted definition.¹⁸ This definition cannot violate existing fair housing or civil rights laws.¹⁹
- The owner should consider whether any homeless admissions preference will give priority to persons referred to the property from a partnering agency (such as a temporary housing program), and how eligibility for the preference will be verified.²⁰
- Owners should also consider whether they will use "alternating selection" when implementing the admissions preference.²¹ For example, if an owner has three units available, the owner could provide one unit to a homeless applicant and two units to non-homeless applicants off of the waitlist. How an alternating selection scheme is applied must be included in the property's Tenant Selection Plan.
- Owners must be mindful of the fact that adopting an admissions preference cannot change the designation of the property or of specific units.²² For example, a property designated as elderly housing cannot begin admitting non-elderly persons simply because of any admissions preference for homeless persons and families.

¹⁴*Id.*

¹⁵*Id.*

¹⁶*Id.* at 3.

¹⁷*Id.* at 2.

¹⁸*Id.*

¹⁹*Id.* at 4.

²⁰*Id.* at 2, 3.

²¹*Id.* at 3.

²²*Id.* at 4.

Any owner adopting a homeless admissions preference must ensure that the adoption would comply with all fair housing and civil rights obligations.²³ For instance, the admissions preference could not exclude persons of a particular race or religion. Owners "should analyze demographic data of the waiting list population and of the population in the community and compare this to the demographic characteristics of those who would qualify for the preference to ensure that the preference does not" disadvantage particular classes protected by the Fair Housing Act.²⁴

Owners who adopt an admissions preference to include homeless families must submit the preference to HUD since a preference for homeless families is not explicitly included in the regulation.²⁵ HUD will approve such an owner-adopted preference if "it does not result in discrimination, violate civil rights or equal opportunity requirements, or conflict with statutory, regulatory, or program requirements."²⁶

Additional Admissions Policies

While an owner may adopt an admissions preference, the Notice reminds owners that they must deny admission to households with a person evicted from federally assisted housing within three years due to drug-related criminal activity;²⁷ however, the owner may consider certain exceptions.²⁸ Furthermore, owners must deny admission to a household with a person(s) using illegal drugs,²⁹ or if there is reasonable cause to suspect that a household member's drug or alcohol abuse might interfere with the health, safety, or right to peaceful enjoyment of other tenants.³⁰ Owners must also deny admission to individuals required to register as state lifetime sex offenders.³¹

Furthermore, while owners may devise additional screening criteria, an owner who wishes to serve more homeless persons should "consider reviewing his/her discretionary admission policies to determine if any changes can be made to remove barriers."³² However, the Notice reminds owners that they cannot establish different admission or termination policies for those tenants admitted under any homelessness admissions preference.³³

²³*Id.*

²⁴*Id.*

²⁵*Id.*

²⁶*Id.*

²⁷*Id.* at 5.

²⁸*Id.*

²⁹*Id.*

³⁰*Id.*

³¹*Id.*

³²*Id.*

³³*Id.* at 5-6.

Conclusion

Advocates should familiarize themselves with this Notice, and use it to maximize the ability of their homeless clients to obtain housing. For example, advocates could work with local owners to adopt a homelessness admissions preference or expand an existing preference to include homeless families. Additionally, advocates may also use this Notice to encourage owners to partner with local organizations serving homeless individuals and families as a means of implementing any owner-adopted homelessness preference. ■