MLRI MASSACHUSETTS LAW REFORM INSTITUTE

99 CHAUNCY STREET
SUITE 500
BOSTON, MA 02111

617.357.0700 PHONE
617.357.0777 FAX
WWW.MLRI.ORG

January 7, 2014

Michelle Aronowitz, Deputy General Counsel for Fair Housing and Enforcement
Carol Galante, Assistant Secretary for Housing
Bryan Greene, Acting Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

Re: Request for Guidance or Policy Concerning Discriminatory "First-Come, First-Served" Application and Admissions Practices in HUD Multifamily Housing.

Dear Ms. Aronowitz, Ms. Galante and Mr. Greene:

Please accept this letter from the Massachusetts Law Reform Institute (MLRI) and the Disability Law Center of Massachusetts (DLC) as a formal request for HUD guidance or policy regarding "first-come, first-served" application and admissions practices in multifamily housing.

1. Introduction

HUD currently allows and endorses an application procedure in its multifamily housing programs that generally discriminates against people with disabilities. Although the office of Public and Indian Housing has issued guidance on the fair housing and civil rights violations inherent in first-come, first-served admissions practices, the Office of Housing and FHEO have not done so. That this inconsistency among HUD programs exemplifies the "silo" problem that this administration has attempted to address is troubling. Of greater concern is that the failure to address the discriminatory effects of this policy violates HUD's legal obligation to affirmatively further fair housing. We request that the Department implement a policy similar to HUD PIH Notice 2012-34 to ensure fair access for people with disabilities to HUD-assisted multifamily housing.

This letter will briefly describe: 1) the impediments to equal access for people with disabilities inherent in first-come, first-served admissions practices; 2) two recent cases demonstrating how these practices work to disadvantage people with disabilities; 3) HUD's failure to issue guidance on this issue to multifamily owners or to address it in the recently published edition of the Multifamily Handbook, and; 4) why HUD's acceptance of this discriminatory practice for

multifamily housing violates its statutory obligation to affirmatively further the purposes of the Fair Housing Act.

2. Discriminatory "First-Come, First-Served" Admissions Practices: Brief Background.

Many multifamily developments employ "first-come, first served" application/admissions procedures, also known as chronological or date and time systems. These practices essentially require a race to a management office to secure an advantageous place on a waiting list.[1] The first to receive and return the application will be the first considered for admission. These procedures reward speed, agility, physical endurance, cognitive ability and other traits that are not evenly distributed among the population. In particular, people with disabilities are likely to fare worse than others when attempting to rush to a management office to get an application, quickly fill it out and return as fast as possible. And of course, many people with disabilities would not even brave the arduous conditions and long lines required by the process.

MLRI, DLC and others have on several occasions alerted HUD to this issue. As a result of our advocacy, the Office of Public and Indian Housing, first at the Boston field office and then at the national level, issued guidance to PHAs alerting them that first-come, first-served procedures will almost invariably impede housing opportunities for people with disabilities in violation of various civil rights and fair housing laws.[2]

As part of a February 26, 2013 panel presentation to FHEO staff at HUD headquarters, Judith Liben of MLRI presented disturbing evidence illustrating why these procedures are harmful to everyone, but especially to people with disabilities. Ms. Liben showed video clips from Fall River Massachusetts; St. Bernard Parish, Louisiana; Bessemer, Alabama; East Point, Georgia; and Taylor, Michigan where thousands of people stood in line for many hours or days risking bad weather, violence and more – merely to pick up applications for HUD-assisted housing. The presentation was then written up in HUD's online publication *The Edge* in an article titled *Three Ways to a Fair Shot at Housing*.[3]

---

[1] Use of the term "race" is not just metaphorical. For example, in Dallas in 2011 thousands of people *ran* to a housing office to be first in line to pick up applications for HUD housing assistance. The news story covering the event, in which eight people were injured, called it a "stampede." In a cruel irony, this stampede took place outside the Jesse Owens Memorial Complex in Dallas - Jesse Owens being the famous African-American Olympic runner and winner of the 1936 Berlin Olympics. See news coverage of the footrace for HUD housing at http://www.wfaa.com/news/local/Hundreds-line-up-for-Dallas-County-Rental-Vouchers-125555383.html.

[2] See Attachment A to this letter, 1998 Boston HUD notice to Region I PHAs and Attachment B, PIH Notice 2012-34.

[3] The February 26, 2013 video presentation to FHEO at HUD is available at http://youtu.be/HZ0AF9AD_KE. *The Edge* article is available at http://www.huduser.org/portal/pdredge/pdr_edge_featd_article_030813.html. Since the HUD presentation, we have discovered dozens more news stories and videos showing scenes of crowds lining

3. Recent Massachusetts Example of FHEO Approval of "First-Come, First-Served" Admissions Practices in Multifamily Housing.

Faced with these practices that effectively insure unequal access to multifamily housing, on October 10, 2012, we wrote to the Deputy Assistant Secretary for Enforcement at FHEO requesting reconsideration of a Region One FHEO decision reached on April 26, 2012. The seven-page administrative complaint filed by DLC involved the opening of a waiting list of a large HUD-subsidized Boston-area landlord, with a public notice that provided only that applications "may be picked up in person" at the rental office during designated three-hour slots on four specified days over a two-week period. The public notice contained no offer of reasonable accommodations, housing testers were denied accommodations, and applications were ranked first-come, first-served. Nonetheless, Region I HUD dismissed the complaint, finding no reasonable cause.[4]

On July 8, 2013, Turner Russell, Director of the Enforcement Support Division at FHEO, issued a two-page denial of the request for reconsideration. We do not write to re-litigate this case, but to highlight ongoing concerns within the fair housing community over HUD's enforcement process and urge you to confront the larger issue raised in our complaint - the continued use of first-come, first served admissions practices in HUD multi-family housing.

---

up in hot or rainy weather, sometimes for days, sometimes suffering injuries and arrests - all trying to get ahead in the line simply to pick up applications for HUD-assisted housing and be placed higher up on a chronological list. In addition to the Dallas "stampede" mentioned above, see, for example: http://www.woodtv.com/news/local/kent-county/hundreds-line-up-for-section-8-vouchers (Kentwood, Michigan 2009), http://www.wftv.com/news/news/thousands-wait-in-line-for-section-8-housing/nFBqs/ (Hialeah, Florida 2009); http://www.huffingtonpost.com/2010/08/11/thousands-wait-to-apply-f_n_678840.html (Atlanta, Georgia 2010); http://www.washingtonpost.com/local/a-long-nights-wait-for-affordable-housing/2011/11/29/gIQAFbDKAO_story.html (Washington DC, 2011); http://www.popville.com/2012/02/huge-line-for-section-8-housing-in-columbia-heights/ (Washington, DC 2012); http://www.kptv.com/story/18893314/hundreds-wait-to-be-placed-on-list-for-new-low-income-housing-complex (Portland, Oregon, 2012); http://hoboken.patch.com/groups/politics-and-elections/p/hha-opens-up-waitlist-hundreds-wait-in-line (Hoboken New Jersey 2013); http://www.dnainfo.com/chicago/20130815/edgewater/families-flock-edgewater-apply-for-affordable-housing (Chicago, 2013).

For additional examples of waiting lines in HUD Section 8 voucher programs, see http://www.ocala.com/article/20080603/NEWS/908195875#gsc.tab=0 (Marion County, Florida, 2008, hundreds in line, with applicants camping); http://www.wftv.com/news/news/thousands-wait-in-line-for-section-8-housing/nFBqs/ (Volusia County, Florida 2009, thousands in line); http://www.pressherald.com/news/Hundreds-wait-in-line-to-apply-for-housing-assistance.html?pagenum=full (Portland, Maine, 2013, Section 8 vouchers, 700 person line)

[4] See *Disability Law Center, Inc. v. Charlesview Apartments*, HUD Case No. 01-12-0068-8, HUD Inquiry No. 331767.

Overall, the July 8, 2013 HUD decision does not address the obvious issue that people with disabilities do not get a fair shot when an application process rewards speed, physical abilities and cognitive agility. The decision ignored the core fair housing challenges, which were: 1) The ad's language would lead people to reasonably believe that applying for this housing was a race that would reward those who were fleetest and the most able; and, 2) The ad's failure to inform the public that reasonable accommodations were available for people with disabilities made this unfair and inequitable practice even worse.[5]

In brief, here are a few of the most troubling aspects of HUD's investigation and the July 8 decision on reconsideration:

- HUD failed to make findings about the obvious and inherently discriminatory nature of first-come, first-served admissions procedures. The record in the case reflects what HUD has already recognized in the context of public housing and voucher admissions - the detrimental effects of a "race to the admissions office". This same practice is equally discriminatory for persons with disabilities despite the project having a different ownership and financing structure.[6]
- HUD failed to make findings on discriminatory advertising.
- HUD failed to recognize the owner's failure to offer a reasonable accommodation.
- HUD failed to engage in an affirmatively furthering fair housing analysis of the first-come, first served process. [7]

---

[5] We should note, however, that we are not aware of any reasonable accommodations that would effectively avoid the discriminatory effect on people with disabilities participating in a first-come, first-served system. Nevertheless, no accommodations were offered in the public notice.

[6] In 2012, when asked why these practices in multifamily housing should not be scrutinized as they are in HUD's public housing and voucher programs, the individual in the Boston office who had drafted the 1998 notice to PHAs, warning against first-come procedures, responded inexplicably to the effect that "multifamily housing is just different than public housing ... The funding structure isn't the same." This is true, but irrelevant. Under the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, the analysis should be identical in all HUD programs.

[7] Recognizing the unfair and discriminatory nature of the practice, the Massachusetts Department of Housing and Community Development (DHCD) has banned first-come, first-served procedures in the state's recently revised Affirmative Fair Housing Marketing and Resident Selection Plan:

> A 'first-come, first serve' method of generating the waiting list order of new applicants that apply during said application period *shall not be permitted as it may present an impediment to equal housing opportunity for some applicants, including some applicants with disabilities.* Therefore, a random selection or other fair and equitable procedure for purposes of adding persons to a wait list upon opening the wait list or remarketing the units must be utilized, subject to the approval of the Subsidizing Agency.

DHCD's Affirmative Fair Housing Marketing and Resident Selection Plan (2013), p. 12 (italics added, footnote omitted). http://www.mass.gov/hed/docs/dhcd/hd/fair/afhmp.pdf. The DHCD policy does allow for limited exceptions, such as individual homeownership units after an initial lottery, subject to specified reasonable accommodation procedures.

- HUD engaged in a flawed disparate impact analysis. This issue, raised in our reconsideration request, was not even discussed in the reconsideration decision.

4. Recent Maryland Example of "First-Come, First-Served" Admissions Practices in Multifamily Housing

Several months ago we were contacted by a Maryland housing services agency assisting a 62 year-old woman with a disability transitioning from a nursing home to the community. This story illustrates how first-come, first-served admissions are both antithetical to fair housing and equal opportunity for persons with disabilities, and also may serve to undermine the *Olmstead* community integration mandate.

The prospective tenant with disabilities was informed about a possible housing opportunity in a Maryland development in which all units in the building are assisted with deep project-based subsidies.[8] She called the leasing office to inquire and was informed by property management that the development was opening its wait list for 3 hours on Wednesday, October 9, 2013 from 9 AM-12 PM.

The prospective tenant asked the property management staff if an application could be mailed to her due the difficulty of arranging transportation options and support assistance on such short notice. She was told by the property management staff that she had to show up in person and that she would have to first come to the property management office to pick up a list of required documents. When she asked if the list of documents could be provided over the phone, the management's response was "no". After several frustrating attempts, and as a result of luck and determination, the applicant was able to secure transportation and participate in the "race to the rental office," at 9:00 a.m.

The larger point is that chronological admissions practices cannot be readily modified for persons with mobility-related and other disabilities to comport with fair housing principles. If HUD fails to adopt a uniform practice requiring lotteries or other random selection approaches, these applicants are subjected to the vicissitudes of often inadequately trained staff at thousands of developments receiving HUD project subsidies.

5. HUD's Recently Published Multifamily Handbook Endorses First-Come Practices that Impede Equal Access for People with Disabilities.

Unlike PIH, HUD's Office of Housing has not issued guidance to address this issue. In fact, on August 7, 2013 HUD published Change 4 to Handbook 4350.3 Rev.1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, which continues to endorse and indeed *require* the first-come procedure with statements such as that on page 4-37: ". . . owners *must* select applicants from the waiting list in chronological order to fill vacancies" (emphasis provided).

---

[8] The identity of the development, the management agency, and the housing services agency and their contact information, is available from us upon request.

The Handbook does not appear to have any references to lottery or other random selection procedures that avoid the fair housing and disability discrimination problems.

6. HUD's Duty to Affirmatively Further Fair Housing Requires Prohibition of First-Come Admissions Practices.

HUDs acceptance of an overtly discriminatory practice in the multifamily handbook occurs almost simultaneously with the publication of the Affirmatively Furthering Fair Housing proposed rule at 78 Fed Reg 43710 (July 19, 2013). The proposed rule's failure to include multifamily programs in any aspect of the AFFH obligation only reinforces the perception in the civil rights community that multifamily housing remains somewhat insulated from FHEO scrutiny compared to the public housing and voucher programs.

For its grantees, HUD defines AFFH in the proposed rule at 24 C.F.R. § 5.152 as

> . . . taking proactive steps beyond simply combating discrimination to foster more inclusive communities and access to community assets for all persons protected by the Fair Housing Act. . . . and to foster and maintain compliance with civil rights and fair housing laws. For participants subject to this subpart, these ends will be accomplished primarily by making investments with federal and other resources, instituting strategies, or taking other actions that address or mitigate fair housing issues identified in an assessment of fair housing (AFH) and promoting fair housing choice for all consistent with the policies of the Fair Housing Act.

HUD itself has the primary and direct responsibility under 42 U.S.C. § 3608(e)(5) to further the goals of the Fair Housing Act. We are writing to notify HUD that first-come, first-served practices create, as the proposed AFFH definition describes, "significant disparities in access to [HUD] assets" for people with disabilities and fails "to foster and maintain compliance with civil rights and fair housing laws."[9] Thus, we urge HUD to do no less than the proposed rule requires of grantees - to take "proactive steps beyond simply combating discrimination" and "tak[e] other actions that address or mitigate fair housing issues identified in an assessment [of this issue] and promot[e] fair housing choice for all consistent with the policies of the Fair Housing Act."

7. Request for HUD Action

We ask HUD to squarely address the indisputable civil rights problems inherent in first-come systems as utilized by multifamily owners with no less vigor than it proposes to require of other HUD grantees under the proposed AFFH rule. The practice should be prohibited generally in all of HUD's programs so that people with disabilities will not be at the end of the line when attempting to apply for those programs. At a minimum, the Office of Housing and/or FHEO

---

[9] In addition to the Charlesview fair housing complaint described above, on August 26 2010 several organizations wrote to Secretary Donovan, Assistant Secretary Henriquez and Barbara Sard describing the nature of the problem. Again, on April 10, 2012 we wrote a similar letter to Sara Pratt, Deputy Assistant Secretary of Enforcement at FHEO.

should issue guidance similar to PIH Notice 2012-34. If HUD were to take a strong stand to comply with the Fair Housing Act and Section 504 by revising this policy, the ugly scenes in Texas, Michigan, Georgia, Alabama, Florida, Washington, DC, and elsewhere need not be repeated.

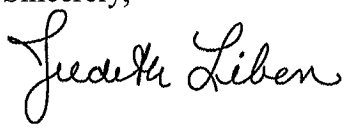
The solution is not difficult. The Boston HUD office issued guidance to PHAs suggesting that in order to avoid unlawfully disadvantaging people with disabilities PHAs should consider using random selection procedures. Thereafter, the Massachusetts Department of Housing and Community Development (DHCD) switched to a centralized one-stop lottery application for its Housing Choice Voucher program and approximately 90 local housing agencies, organized by the Massachusetts chapter of NAHRO followed suit.[10] Now there are no more "cattle calls" in Massachusetts for most PIH programs, and many housing agencies around the country have also developed similar systems that have worked out well. The experience in Massachusetts and elsewhere demonstrates that this is a solvable problem.

---

[10] See, for example, the Massachusetts NAHRO Section 8 waitlist webpage at http://massnahro.org/S8_Home.php.

We trust that HUD will swiftly implement policies to ensure that the days of stampedes for HUD-assisted housing will soon be over, and avoid the time, expense and adverse publicity of unnecessary litigation. We look forward to HUD's prompt response to the issues raised in this letter and we hope to work with the Department to fix this problem.

Sincerely,



Judith Liben
Senior Housing Attorney
Massachusetts Law Reform Institute
99 Chauncy Street
Boston, MA 02111
617-357-0700 X327
jliben@mlri.org

Richard M. Glassman
Litigation Director
Disability Law Center
11 Beacon Street
Suite 925
Boston, MA 02108
617-723-8455 X122
rglassman@dlc-ma.org

Cc: Jennifer Ho, Senior Advisor to Secretary Donovan
Ben Metcalf, Deputy Asst. Sec for Multifamily Housing.
Sara Pratt, Deputy Assistant Secretary for Enforcement, FHEO
Claudia Gordon, White House Office of Public Engagement.

Attachment A

U.S. Department of Housing and Urban Development

O'Neill Federal Building
10 Causeway Street
Boston, Massachusetts 02222-1092

New England

March 2, 1998

TO: PHAs administering Section 8 Programs

SUBJECT: Management of Section 8 Waiting Lists

HUD's Office of Fair Housing and Equal Opportunity and Office of Public Housing for New England are issuing this guidance to assist PHAs which administer Section 8 Existing programs. Most of the matters addressed here concern those PHAs which open their Section 8 waiting list only periodically (rather than keeping the list open continuously). A few of the items pertain to all PHAs administering a Section 8 program.

The decision to open a Section 8 waiting list only periodically is fully within the authority of PHAs. However, periodic openings can be confusing for PHA clients and, in certain circumstances, can have effects which are illegally discriminatory. One objective of this guidance is to assure that PHAs are fully aware of the particular obligations that come with administering such periodic openings, as well as particular options that are available in processing applications received during a periodic opening.

Notice of Waiting List Openings

When a PHA opens a waiting list, it must give notice by publication in a local newspaper of general circulation and by distribution through minority media. [24 CFR 982.206) HUD regulations under Section 504 also require that PHAs use forms of outreach which will reach persons with disabilities, [24 C.F.R. 8.28 (a)(I)] In order to ensure suitable outreach to a broad range of applicants, including people of color, families with children, and persons with disabilities, the housing authority should include among its targets, minority organizations, disability organizations and Independent Living Centers. PHAs should also consider issuing notifications of waiting list openings to local welfare offices, homeless shelters, domestic violence shelters, the Red Cross, CAP agencies, as well as Departments of Mental Health ant. Mental Retardation... For persons with sensory disabilities, housing authorities should consider using different outreach methods such as radio advertisements and closed caption advertisements on cable television.

Any public notice announcing the application procedure should be simple, direct and clear. It should contain sufficient detail to inform potential participants when the waiting list will be open

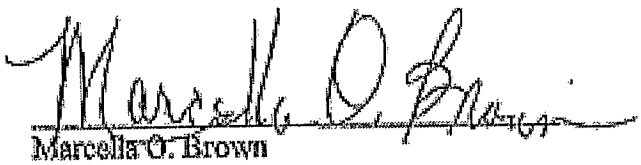
982.202] For example, some applications require applicants to answer questions about: any and all arrests or convictions, although only crimes involving drugs and violence are grounds for rejection of an application under Section 8; the identities and addresses of absent parents or ex-spouses; the names and addresses of persons the housing authority can contact as "general references."

Some PHAs report that requiring all documentation at initial application is inefficient and point out that some such information will be invalid by the time an applicant reaches the top of the list. Thus, a simple "pre-application" requiring minimal documentation may prove both more efficient and more expedient since it could be used for both a Low-Rent and Section 8 program. Complete documentation can be postponed until an applicant approaches the top of the list. In any event, PHAs should limit their requests for documentation from Section 8 applicants to what is required to verify program and preference eligibility under Section 8.

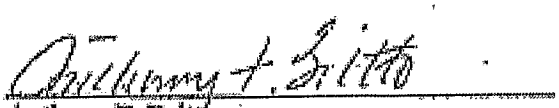
Conclusion

We encourage PHAs to seriously consider using random-choice methods as an alternative to chronological processing of a periodically opened waiting list. We believe that the former methods compare favorably. in terms of administrative burden once a PHAs fair housing responsibilities are factored into the decision.

We welcome comments on these matters and hope to provide a forum for discussion of these and related matters in the upcoming months.



Marcella O. Brown
Director
Office of Fair Housing & Equal Opportunity
New England



Anthony F. Britto
Director
Office of Public & Indian Housing
New England

Attachment B

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Special Attention of:
Public Housing Agency Directors
Section 8 and Public Housing Administrators
HUD Directors of Public Housing
PIH Program Center Coordinators
Public Housing Division Directors

Notice PIH-2012-34 (HA)

Issued: August 13, 2012

Expires: Effective until amended, superseded, or rescinded

Cross References:
24 C.F.R. Part 982, Subpart E
24 C.F.R. § 8.28(a)(1)
24 C.F.R. § 960.206
24 C.F.R. § 903.7(b)(2)
24 C.F.R. § 983.251

SUBJECT: Waiting List Administration

1. **Purpose.** This notice provides guidance on the administration of a Public Housing Agency's (PHA) Housing Choice Voucher (HCV) and Public Housing (PH) waiting lists, on the topics of opening the waiting list, applicant selection, placing applicants on the waiting list, and outreach. This notice does not provide guidance on all aspects of waiting list administration nor does it comprehensively address all waiting list requirements, such as fair housing requirements. For additional details, PHAs should review HCV regulations at 24 C.F.R. Part 982 Subpart E and PH regulations at 24 C.F.R. § 960.206, as well as the HCV and PH occupancy guidebooks found on HUD's website.

2. **Background.** PHAs are responsible for establishing an application and selection process that treats applicants equitably and provides an effective method for determining program eligibility. While program regulations give PHAs flexibility in certain aspects of the application and selection process, the processes must conform to established rules and regulations, including fair housing civil rights laws and regulations, and must result in consistent, non-discriminatory determinations on applicant eligibility, placement of applicants on the waiting list, and selection of applicants from the waiting list.

   Establishing a well-managed application and selection process that promotes the equitable and consistent treatment of families is an important PHA responsibility. A well-managed waiting list helps ensure equitable and consistent treatment of applicants, that needy families receive assistance as quickly as possible, and can provide PHAs with data about their community's needs and the operational needs of their programs. Such data can be used by the PHA to:
   - Make determinations on the need for specific waiting list preferences;

- Plan for any adjustments in the PHA's outreach efforts;
- Determine whether the PHA will be able to satisfy program requirements, such as income-targeting requirements; and
- Determine needed improvements in property management and maintenance of its PH program and whether leasing objectives of its HCV program will be met.

3. **Applicability.** This notice applies to all PHAs administering the HCV and PH programs.

4. **Effective Date.** This notice is effective upon publication and is effective until amended, superseded, or rescinded.

5. **Waiting List Administration.**

a) Opening the Waiting List. A PHA has flexibility to determine whether to keep the waiting list open indefinitely or whether to open the waiting list periodically for defined application periods. PHAs should only make this determination after careful analysis and consideration of all circumstances, including whether the length of the waiting list makes the wait for housing unreasonably long or whether there is a sufficient number of eligible applicants to ensure that new and turnover vouchers under the PHA's HCV program are issued as quickly as possible.

Any public notice announcing a waiting list opening and application procedure should be simple, direct, and clear but with sufficient detail to inform applicants of the time and place to apply, any limitations on who may apply, and any other information the applicant may need to successfully submit the application. The notification process must also comply with HUD fair housing requirements, such as adopting suitable means to assure that the notice reaches eligible individuals with disabilities and those with limited-English proficiency.[1] HCV program regulations require the public notice to appear in a local newspaper of general circulation, minority media, and other suitable means. These practices are strongly encouraged in the PH program.

PHAs should also keep in mind safety concerns when reopening waiting lists in areas of high demand. PHAs can use various strategies to avoid application intake procedures that may cause a safety concern for the public and PHA staff. Offering only one central location to submit applications under such circumstances is not advisable. Having multiple application intake sites and submission mechanisms, assigning applicants random placement on the waiting list, or having an open application period during which PHAs receive applications by mail are alternatives that can help the PHA safely manage the application intake process.

Additionally, the Department cautions against opening the waiting list and accepting applications for limited periods, such as a single day. This approach may contribute to

[1] For additional details please see 24 C.F.R. § 8.6 and the *Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, published on the Federal Register January 22, 2007 (72 FR 2732).

disorderly and unsafe application intake processes. Opening waiting lists for longer periods and making applications available ahead of time will create safer and more effective application intake processes.

b) Placing Applicants on the Waiting List. PHAs may consider the use of a lottery or other random choice technique to select which applicants will be placed on the waiting list. In making this determination, PHAs should consider whether this is a reasonable approach in their jurisdiction. For example, this approach would be reasonable for PHAs located in areas where the volume of applications is high enough that placing each eligible applicant on the waiting list would result in an unrealistic waiting period for housing. If a PHA uses this approach, the PHA must describe it in their PHA plan or administrative plan and any public notice of a waiting list opening must clearly state that this system will be used to place applicants on the waiting list.

PHAs may also establish preferences and open the waiting list only to applicants who qualify for the preference(s). The PHA must base its preference system on local housing needs and priorities by using generally accepted data sources, such as a jurisdiction's Consolidated Plan, and preferences must be consistent with fair housing and civil rights laws. PHAs that use preferences to determine which applicants will be placed on a waiting list must describe such preferences in their PHA plan, their admission and occupancy policies, or their administrative plan and any public notice of the waiting list opening must clearly state the use of this procedure.

c) Selecting Applicants from the Waiting List. HUD regulations at 24 C.F.R. § 982.207 and 24 C.F.R. § 960.206(e) list two possible methods of selecting applicants on the waiting list with the same preference qualifications: date and time of application and a drawing or other random choice technique. Even when either of these methods may be acceptable, the PHA should carefully consider its particular circumstances in choosing one method over the other. For example, use of a lottery or other random choice technique would be a better choice for a PHA whose demand for housing assistance typically exceeds availability. Under the random choice method, the order in which an applicant submits an application has no bearing on how soon the applicant will receive assistance. This method may significantly reduce or eliminate the possibility of a disorderly application process and make the process more manageable for both the applicant and the PHA. It is advisable for a PHA using a lottery, drawing, or other random choice technique to inform potential applicants that the timing of application submission will have no effect on how soon they will receive assistance.

PHAs should also consider offering several locations and methods by which applicants may submit their applications, especially if the PHA chooses to place applicants on the waiting list by date and time of application. For example, the PHA may offer applicants the opportunity to submit applications by mail, fax, telephone, e-mail, or other electronic formats. Providing such flexibility to applicants will help the PHA avoid an application process that may become disorderly or even dangerous for both the applicant and the PHA.

PHAs should also be aware of the implications each selection method may have. For instance, ordering a waiting list by the date and time of application may result in an adverse effect to applicants with disabilities, especially when the PHA opens its waiting list periodically. Therefore, the PHA must be prepared to make necessary modifications in its process to mitigate this effect, such as mailing applications to people with disabilities well in advance of this "first-come, first-served" opening and allowing submission of applications by mail or electronically. Further, when considering access to applicants with disabilities PHAs should consider using a lottery or other random choice technique because these techniques significantly minimize the need for special procedures or other administrative steps to mitigate adverse effects that may be costly and time consuming even when not considered an undue burden under Section 504 of the Rehabilitation Act of 1973.

d) Outreach. The PHA must inform individuals in their jurisdiction of the availability of housing through various means of outreach. Outreach is also an opportunity to educate the local community, including potential HCV landlords, about the PHA's programs. A PHA's waiting list plays an important role in determining a PHA's outreach needs: a waiting list that is not representative of the various demographics in the community in need of housing may be indicative of a need to adjust the PHA's outreach efforts to effectively reach those groups.

PHAs should also consider whether a waiting list opening will be targeted to a specific group, such as when a PHA:

- Has received funding targeted to a specific population (for example, Family Unification Program (FUP) vouchers and Category 2 Non-Elderly Disabled (NED) vouchers); or
- Is opening a waiting list for a Designated Housing project.

In such cases, the PHA may conduct outreach only to the special population group. Please note that targeting of a specific group must be consistent with the PHA's preferences, and site-specific waiting list requirements set out in its admissions and occupancy policies. Before a specific group is targeted, the preference must be included in the PHA's admissions and occupancy policies or HCV administrative plan. In cases where the PHA has been awarded funding by HUD for a specified category of families (e.g. NED or FUP vouchers), the PHA does not have to establish a preference for the specified category.

PHAs' operating programs that serve specific populations may also wish to conduct educational outreach to landlords and service-provision organizations, especially if the populations are hard-to-house populations. If a PHA partners with another organization to serve a specific population, the partnering organization can play a vital role in assisting the PHA in its outreach efforts, including any educational outreach.

To ensure a broad range of applicants, PHAs should consider issuing notifications of waiting list openings to local welfare offices, homeless shelters, domestic violence shelters, and minority organizations, among others. PHAs should also think creatively when developing outreach efforts and consider using tools like social media sites, other websites, newsletters, and on-site visits.

PHAs must also reach out to persons with disabilities, including disabled individuals in institutions transitioning to community-based settings and those with limited-English proficiency. When opening its HCV and/or PH waiting list, or in any other instance when the PHA engages in educational or other outreach about its programs, the PHA must ensure that the information, including information on the availability of accessible units, reaches the eligible individuals. PHAs may do this by targeting, for example, social service agencies, nursing homes, psychiatric hospitals, and other mental health facilities. PHAs may also contact state Money Follows the Person (MFP) agencies, Medicaid agencies, and other local partner agencies for a listing of institutions where the PHA can send outreach materials.

6. **Contact Information.** Inquiries about this Notice specific to the HCV program may be directed to Amaris Rodriguez, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at Amaris.Rodriguez@hud.gov. Inquiries specific to the PH program may be directed to Virginia Flores, Public Housing Management and Occupancy Division, Office of Public Housing and Voucher Programs, at Virginia.Flores@hud.gov.

/s/

Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing