

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4131-N-01]

## Notice on Site-Based Waiting Lists

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, and Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice invites certain public housing agencies ("PHAs") to request approval of tenant selection and assignment plans that vary from general program requirements in order to implement site-based waiting lists at public housing sites under certain circumstances. The notice explains HUD policy on this matter and describes the procedure for making such requests. HUD will approve under this notice only those requests that are consistent with Title VI of the Civil Rights Act of 1964 ("Title VI") and that meet the other requirements of this notice.

**EFFECTIVE DATE:** January 7, 1997.

**COMMENT DUE DATE:** March 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Rod Solomon, Senior Director for Policy and Legislation, or Stephen I. Holmquist, Policy Development Advisor, Office of Policy, Program, and Legislative Initiatives, Room 4116, (202) 708-0713, or Linda Campbell, Director, Marketing, Leasing and Management Division, Office of Public and Assisted Housing, Room 4206, (202) 708-0744, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708-0713; or Larry Pearl, Office of Fair Housing and Equal Opportunity, Room 5226, (202) 708-0288, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708-4252. Hearing or speech-impaired individuals may access these numbers via TTY by calling the Federal Information Relay Service at 1-800-877-8339. (With the exception of the "800" number, these are not toll-free numbers.)

### SUPPLEMENTARY INFORMATION:

#### I. Paperwork Reduction Act Statement

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and have been approved and assigned OMB control number 2577-0214, which expires March 31, 1997. An agency may not conduct or sponsor, and a person is

not required to respond to, a collection of information unless the collection displays a valid control number.

#### II. Solicitation of Comments

HUD invites comments on this notice. The comments will be taken into consideration in the event HUD decides to revise the procedures.

#### III. Site-Based Waiting Lists

##### 1. Purpose

This notice invites certain public housing agencies ("PHAs") to request approval of tenant selection and assignment plans that vary from general program requirements in order to implement site-based waiting lists at public housing sites under certain circumstances. The notice explains HUD policy on this matter and describes the procedure for making such requests. HUD will approve under this notice only those requests that are consistent with Title VI of the Civil Rights Act of 1964 ("Title VI") (42 U.S.C. 2000d-1 *et seq.*) and that otherwise meet the requirements of this notice.

##### 2. Applicability

This notice applies only to PHAs that have Annual Contributions Contracts covering a total of 1,250 or more public housing units. For each such PHA, the applicability of this notice (under the criteria described below in this Section) may be determined with respect to all of the PHA's public housing sites, or may be determined separately with respect to either the PHA's mixed-population and elderly-designated sites or the PHA's general occupancy sites (i.e., all sites other than mixed-population and elderly-designated sites). Regardless of which of these options a PHA chooses, this notice is applicable where:

- (a) At least 90 percent of the occupants of the sites and at least 90 percent of the applicants on the applicable public housing waiting list(s) are persons of the same race; or
- (b) At least 90 percent of the occupants of the sites and at least 90 percent of the applicants on the applicable public housing waiting list(s) are of the same ethnicity.

This notice does not apply to PHAs which are operating under a court order involving civil rights violations; to PHAs for which HUD has made a determination of apparent non-compliance with Title VI or which are currently operating under a Voluntary Compliance Agreement; or to PHAs that are operating under a settlement or conciliation agreement providing for class-wide relief for race or national

origin discrimination under the Fair Housing Act.

HUD's authority under 24 CFR 1.4(b)(2)(iii) to approve tenant selection and assignment plans that vary from general program requirements remains in effect for PHAs that do not fit within the bounds of this notice.

For purposes of this notice, each "site" may consist of:

- (a) One public housing development,
- (b) More than one public housing development (by reason of proximity or other geographic characteristics), or
- (c) A portion of one or more public housing developments (in the case of scattered-site developments), as proposed by the PHA and approved by HUD under this notice. For purposes of this notice, a PHA proposing site-based waiting lists at its general occupancy sites must include all of its general occupancy units in an identified site, and a PHA proposing site-based waiting lists at its mixed population and elderly-designated sites must include all of its mixed population and elderly-designated units in an identified site.

##### 3. Background.

Title VI prohibits discrimination on the grounds of race, color, and national origin in any program or activity receiving Federal financial assistance. PHAs, as recipients of HUD funds, are barred by Title VI from subjecting housing residents to segregation or separate treatment on any of these grounds. HUD has implemented Title VI through regulations at 24 CFR part 1. With respect to public housing admissions, the provisions of 24 CFR 1.4(b)(2)(ii) require PHAs to assign eligible applicants to dwelling units in accordance with a plan providing for assignment on a community-wide basis. Under this authority, HUD generally requires assignment of applicants to dwelling units from a single waiting list (although PHAs may have one waiting list for general occupancy units and another for mixed population and elderly-designated units). However, HUD also has existing authority to approve plans that vary from the general requirement when such plans involve housing programs in which persons of one race or of one ethnicity predominate and when such plans would be consistent with Title VI. For the reasons stated below, this notice invites PHAs to request approval of such plans.

PHAs that do not meet the criteria set forth in Section 2 of this notice may request approval of site-based waiting lists. However, such requests will not be considered under the special processing guidelines in this notice.

#### 4. Statement and Explanation of HUD Policy

Federal funding of public housing began with the United States Housing Act of 1937. For the first 25 years of that Act, the Federal government permitted, if not encouraged, segregation by race in public housing developments. Active attempts by the Federal government to desegregate public housing began only with Executive Order 11063 issued by President Kennedy in November 1962. The order banned discrimination prospectively in federally funded housing, but sought to end discrimination in existing developments only through persuasion and voluntary activity. Executive Order 11063 was followed by passage of the 1964 Civil Rights Act, Title VI of which barred discrimination in all federally assisted programs and provided for termination of funding where discrimination continued.

Policies to implement Title VI through tenant selection and assignment policies thereafter took a variety of forms. The first iteration embodied "freedom of choice" principles. Applicants were allowed to apply to the housing development of their choice based on available units and their place on a waiting list. During implementation of this policy, segregation did not appreciably diminish. Freedom of choice policies did not address the effects of the site selection process, by which developments had been located in all-white and all-black areas with tenants assigned accordingly. In many cases, the choice for tenants after these patterns were established was between an all-black development in a black neighborhood or an all-white development in a white neighborhood. An integrated development, much less an integrated neighborhood, was rarely an option. Even assuming fair administration of the policy, which was not always the case, it did not effectively address the complexities of the legacy of segregation.

HUD next required PHAs to adopt community-wide waiting lists in which applicants were offered vacancies based on tenant selection preferences and the date and time of application. If offers were rejected, the applicants lost their standing on the waiting list. In spite of this effort, segregation continued, apparently unabated and the situation in many communities grew worse; compliance was spotty and mechanisms to ensure it (hearings and fund cut-offs) were either unwieldy or politically controversial. Where the policy was enforced, it sometimes acted to

discourage all but the most desperate applicants. Over time, the policy led applicants to self-select: applicants willing to be placed in those developments with vacancies (often less desirable developments) tended over time to be minority families for whom public housing was a last resort.

Other low-income federally assisted housing programs created after Executive Order 11063 and Title VI provided housing in privately owned apartment buildings and developments. Unlike public housing, each private development established its own waiting list. This housing was disproportionately utilized by non-minority applicants, leading to further isolation of minority tenants in public housing. Segregation was thus exacerbated, and the use of a community-wide waiting list to promote integration in general occupancy public housing was rendered even more ineffective.

For these and other reasons, the resident populations of a number of large PHAs today are predominately of one race or of one ethnicity. Assignment of applicants to dwelling units in accordance with a plan providing for assignment from a single waiting list is not an effective means of furthering desegregation for such PHAs. Abandoning this policy in favor of one that allows applicants more options in these circumstances should not be expected to diminish civil rights protections and will likely promote other important values.

For instance, in an almost exclusively one race public housing system, it is very common to see only members of that race applying for housing with that PHA. In this situation, a change in tenant policy is unlikely to worsen segregation. It may, in fact, improve the racial diversity and integration within the PHA and its developments. Individuals may be more willing to apply for a particular public housing site with which they are familiar, even if they would be a racial minority within that site. Thus, the site-based waiting list option may increase racial or ethnic diversity within the PHA's developments. As long as it did not lead to resegregation or similar problems, the policy will likely have a positive impact on the fair housing environment within the PHA.

On the other hand, if as a result of implementing site-based waiting lists, a PHA showed signs of becoming more segregated, the fact that HUD had approved the original application for site-based lists would not insulate the PHA from compliance with Title VI and other applicable civil rights laws. This

circumstance could arise if an approved PHA began marketing its various developments on a racial or ethnic basis. It could also occur if other changes in operations, such as changes to preference rules or demolition of a significant portion of the PHA's stock, appear to cause the site-based waiting list policy to have an unanticipated discriminatory impact.

Site-based waiting lists can help to foster a sense of community in public housing neighborhoods by strengthening existing ties to family, school, work, and neighborhood institutions and can also promote other policy objectives of the public housing program. For example, allowing applicants to move to the development of their choice, rather than assigning them the first available unit, may attract to public housing communities a more diverse population with a broader range of incomes. As a result, more working families may apply to and move into public housing, providing role models and possibly access to information about job opportunities for current public housing residents. Serving households with a broader range of incomes would also lead to a reduction in PHA operating subsidy needs.

In addition, recently-enacted and proposed program reforms will make PHAs in the future much more closely linked to local housing markets. PHAs will be required to make market-influenced decisions about rent levels, income range preferences, the viability of their developments, and other issues that are necessarily site-based. Site-based waiting lists could be an important part of that new approach to public housing management.

Therefore, for the reasons stated above, this notice announces that HUD will, subject to specific conditions, grant approval of tenant selection and assignment plans involving site-based waiting lists where HUD determines that, due to the predominance of persons of one race or of one ethnicity both in the current resident population and on the applicable community-wide applicant waiting list, a community-wide waiting list does not serve the goals of Title VI in any demonstrable way, and that site-based waiting lists are consistent with Title VI.

#### 5. Submission and Review of Requests

##### A. PHA Submission Requirements

A PHA may request HUD approval to implement site-based waiting lists under this notice by submitting its plan and the rationale for it to HUD under the procedures described in Section 6, below. No such request shall be granted

without the approval of the Assistant Secretary for Fair Housing and Equal Opportunity ("FHEO") and the Assistant Secretary for Public and Indian Housing ("PIH"). Any such plan must include all of the PHA's general occupancy sites and/or all of the PHA's mixed-population and elderly-designated sites. This notice does not address a PHA's request to implement site-based waiting lists at some of its sites and not at others within these two occupancy types.

A PHA's request for HUD approval of site-based waiting lists under this notice must also include the information described below. Where a site is composed of more than one development or a portion of one or more developments, then the PHA must provide the required information for both the site and for the corresponding development(s).

a. For each development/site operated by the PHA:

- The development name, development number, occupancy type (i.e., general occupancy, mixed-population, or elderly-designated), and number of units by bedroom size;
- Date the development/site originally became available for public housing occupancy;
- Whether the development/site was originally occupied on a segregated basis by race or by ethnicity (as applicable), if that information is available; and
- Racial or ethnic composition (as applicable), by bedroom size;

b. For the general occupancy and for the mixed-population and elderly-designated waiting lists, respectively, the PHA must provide the date of the oldest active application, the number of applicants on the list, the racial or ethnic composition, (as applicable), of the waiting list by bedroom size and an estimate of the length of the wait for an offer by bedroom size.

- c. For the PHA's Section 8 program:
- The number of certificates and vouchers currently in use by race or by ethnicity (as applicable), and bedroom size; and
  - The length and composition of the waiting list by race or by ethnicity (as applicable), and by bedroom size.

d. All location(s) (e.g., developments, sites, offices, or other places) at which the PHA accepts applications for public housing.

e. The PHA's explanation of:

- (1) How the proposed site-based waiting list plan will improve the PHA's public housing program through offering greater choice to applicants,

attracting working families to public housing, or through other benefits, and

(2) Why the plan is consistent with Title VI.

f. A summary of the PHA's current and proposed public housing tenant selection and assignment procedures along with a description of any Consent Decrees, Voluntary Compliance Agreements, or other documentation related to past or current occupancy problems and any measures taken to correct such problems.

#### B. Other Information for HUD Review

In reviewing such requests, HUD will also consider the following information, which is already available to HUD:

a. Race, ethnicity, family (i.e., non-elderly), disabled, and elderly population data for:

- (1) Persons living in the relevant Metropolitan Statistical Area ("MSA");
- (2) Persons living in the PHA's jurisdiction;
- (3) Income-eligible persons living in the relevant MSA; and
- (4) Income-eligible persons living in the jurisdiction.

b. Racial or ethnic composition of the non-PHA housing in the neighborhood around the PHA development/site.

#### 6. HUD Processing of Requests

PHA requests for HUD approval of site-based waiting lists shall be processed in the following manner:

a. A PHA must submit one copy of its request to the Assistant Secretary for Fair Housing and Equal Opportunity ("FHEO") at HUD Headquarters, who shall have lead responsibility to review the request, and who shall provide a copy of it to the Assistant Secretary for Public and Indian Housing ("PIH"), Attention: Marketing and Leasing Management Division. The PHA must also submit one copy of the request to the Director of FHEO at the local HUD office, who shall provide copies of it to the local Director of PIH, the Secretary's Representative, and the State Coordinator or Area Coordinator. The PHA's request must include the name and telephone number of a contact person who understands how the proposed system is to work, who can answer relevant questions, and who can clarify the policies and procedures described in the request. The Assistant Secretary for FHEO and the Assistant Secretary for PIH will make the final determination on the request. HUD will endeavor to process all complete requests within 60 days of receipt by the Assistant Secretary for FHEO.

b. HUD will approve PHA requests to implement site-based waiting lists that are consistent with Title VI and that

meet the other requirements of this notice, as follows:

(1) The PHA has Annual Contributions Contracts covering 1,250 or more public housing units;

(2) (a) At least 90 percent of the occupants of all of the PHA's public housing units, of the PHA's mixed-population and elderly-designated units, or of the PHA's general occupancy units, as applicable, and at least 90 percent of the applicants on the applicable public housing waiting list(s), are persons of the same race; or (b) at least 90 percent of the occupants of all of the PHA's public housing units, of the PHA's mixed-population and elderly-designated units, or of the PHA's general occupancy units, as applicable, and at least 90 percent of the applicants on the applicable public housing waiting list(s) are of the same ethnicity. (See Section 2, above, regarding the separate application of this notice to a PHA's mixed-population and elderly-designated sites and to its general occupancy sites);

(3) The PHA is not operating under a court order involving civil rights violations; has not been found to be in non-compliance with Title VI and is not currently operating under a Voluntary Compliance Agreement; and is not operating under a settlement or conciliation agreement providing for class-wide relief for race or national origin discrimination under the Fair Housing Act; and

(4) The PHA submits Multi-Family Tenant Characteristics Survey (MTCS) reports (HUD Form 50058) in a complete and timely manner.

c. In addition, all HUD approvals under this notice will be subject to the following conditions:

(1) Site-based waiting lists must be implemented for all general occupancy sites and/or all mixed-population and elderly-designated sites;

(2) All locations where a PHA accepts applications, including development/site offices or a central office, must accept applications for admission at all of the PHA's sites. If a PHA implements site-based waiting lists at its general occupancy sites, but not at its mixed-population and elderly-designated sites, then the PHA may choose not to accept general occupancy applications at its mixed-population and elderly-designated sites. If a PHA implements site-based waiting lists at its mixed-population and elderly-designated sites, but not at its general occupancy sites, then the PHA may choose not to accept mixed-population and elderly-designated applications at its general occupancy sites.

(3) The PHA must make available basic information about each site (location, occupancy, number and size of units, number and size of accessible units, availability and accessibility of amenities such as day care, security, transportation, and training programs) to all applicants at all sites;

(4) Preference policies established by PHAs must operate in accordance with law and HUD regulation. Preference policies must be applied in a non-discriminatory manner.

(5) All applicants may apply to any site(s) they choose, subject to valid, current PHA admissions policies. Applicants currently on the waiting list will maintain their original application date. However, in its request under this notice, a PHA may request HUD approval to limit, for reasons of administrative efficiency, the number of site-based waiting lists to which an applicant may apply.

(6) The PHA must provide each applicant with an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types (e.g., regular or accessible) at each of the different sites.

(7) All offers of housing must be made from a central location. Regardless of how many site-based waiting lists an applicant may be on, an applicant's refusal of an offer, without good cause, at any site, will result in the applicant's name being dropped to the bottom of all

public housing waiting lists at that PHA on which the applicant's name appears.

#### *7. HUD Monitoring*

HUD will monitor the implementation of site-based waiting lists approved under this notice for continued compliance with Title VI annually.

#### *IV. Findings and Certifications*

##### *Environmental Impact*

In accordance with 24 CFR 50.19(c)(3) of the HUD regulations, the policies and procedures contained in this rule set out nondiscrimination standards and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

##### *Executive Order 12612, Federalism*

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions in this notice does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

##### *Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive

Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order.

##### *Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this notice under Executive Order 12866, Regulatory Planning and Review. OMB determined that this notice is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Dated: December 30, 1996.

Susan M. Forward,  
*Deputy Assistant Secretary for Enforcement and Investigations.*

Dated: December 30, 1996.

Kevin E. Marchman,  
*Acting Assistant Secretary for Public and Indian Housing.*

[FR Doc. 97-294 Filed 1-6-97; 8:45 am]

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