

From: Ivey, Sharon <Sharon.Ivey@ConcordRents.com>
Sent: Tuesday, June 26, 2018 5:44 PM
To: Marisa Button <Marisa.Button@floridahousing.org>
Subject: Proposed Standards and Processes that Lower Barriers to Rental Housing Entry

Marisa,

Please find attached public comment with regard to FHFC's published "Proposed Standards and Processes that Lower Barriers to Rental Housing Entry".

Thank you,

Sharon

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Comments Regarding

Proposed Standards and Processes that Lower Barriers to Rental Housing Entry

Generally, the concept of treating one group of applicants different than another is contrary to the spirit of fair housing. While income itself is not a protected class, there is a potential for disparate impact discrimination. It appears that FHFC is attempting to impose criteria that could create significant risk for the owner without providing any support in the event that the risk is realized. The risk is extended to individual employees due to the potential for personal liability. For LIHTC developments there is the potential for violations of the general public use requirement of Treasury Regulation §1.42-9. Although §42(g)(9) allows for occupancy restrictions or preferences that favor tenants with special needs, the proposed standards appear to apply to all Extremely Low Income (ELI) applicants rather than only to those ELI households who also meet the special needs definitions in the regulatory documents.

The proposed standards require significant deviations from normal application processing. Properties utilizing on-line applications and screening tools will be required to perform manual reviews which can lead to errors that the on-line tools are designed to prevent, and increases processing time which requires additional staff and increases costs.

Rather than impose specific criteria that may negatively impact owners and management companies, we believe that each owner be allowed to determine the criteria based on that particular owner's appetite for risk.

Tenant Selection Criteria and Approach Requirements

The purpose of the proposed standard that a copy of the written tenant selection criteria be maintained in each tenant file is unclear, however the requirement itself seems wasteful. We recommend that the current criteria be posted in the leasing office and that version history be maintained and available for review, including the date each change in the criteria became effective, so that the application can be cross-referenced with the criteria.

Tenant Application Packet

Section 504 of the Rehabilitation Act of 1973 applies only to properties that receive direct federal subsidy, and, among other things, requires that property owners pay for unit modifications necessary for persons with disabilities. We recommend that the language be changed to "pursuant to the Fair Housing Amendments Act of 1988".

As with the tenant selection criteria, including the details of reasonable accommodation and modification requests and VAWA in each application packet seems wasteful. We recommend that the information be posted in the leasing office.

Deposits

Security deposits are designed to offset the potential costs of damages to the unit and to help guarantee that the resident will follow the lease. Information collected by screening vendors shows that the higher the deposit, the more likely the resident is to pay as agreed. The proposed standards would require that a household that is fully subsidized pay no deposit whatsoever. A minimum deposit amount should be established for households with a rent portion of zero.

Income Requirements

The proposed standard of a minimum income requirement of no more than two times the rent may negatively impact the resident by placing them in an untenable financial position. For example, if the monthly rent is \$300.00, the minimum income required is \$600.00 per month, causing the household to pay 50% of the income in rent, leaving only \$300.00 for groceries, utilities, personal hygiene products and cleaning products necessary to keep the unit in decent, safe and sanitary condition. We recommend that the minimum be no more than three times the rent, but that income that is excluded from the eligibility calculation (e.g. food stamps) be included in the rent-to-income calculation.

Credit Record Checks

Screening vendors may not have the ability to separate credit history related to cable and internet service from other utilities, making it impossible to remove them from consideration. If the applicant intends to accept optional cable or internet service, credit history related to those items becomes relevant. We recommend that this proposed standard be eliminated.

Criminal History

All owners and management companies should be aware of the *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*. It is important to note that the guidance is not regulation and that there has been no change to the Fair Housing Act, rather the document provides insight into HUD's view of criminal screening and how such issues may be viewed if a fair housing complaint is filed. Throughout the industry there are concerns with the guidance, so much so that several members of Congress sent a letter to then-Secretary Julián Castro requesting additional guidance.

Owners and management companies should have reviewed their criminal screening policies and made any changes they felt necessary to comply with the HUD guidance while also protecting the safety of residents and staff (some of whom are also residents) and protecting the real estate. Those changes should apply to every applicant, regardless of income level. If the owner or management company deems it appropriate, based on the particular crime, to conduct an individualized assessment, then they should do so at their own discretion and based upon the ability to find staff who are both competent and educated enough to make those determinations. Certain criminal convictions, such as violent forcible sexual crimes and manufacture of methamphetamine should not be required to have an individual assessment.

One of the pitfalls of an individual assessment is the potential for error. If a criminal conviction denial is overturned and that applicant later commits a crime against another resident or staff member, the owner will almost certainly be sued. This increased risk may inflate insurance costs. Furthermore, the individual(s) tasked with making decisions regarding criminal convictions could be accused of discriminatory conduct, making staff reluctant to assume the responsibility and potentially afraid to make such a decision, leading them to adopt an all-or-nothing policy. Another pitfall is the decision-maker's personal experience with the particular crime. During the voir dire process in criminal cases, prospective jurors are typically asked if they or their loved ones have been the victim of a crime or have been convicted of a crime to determine if any bias exists. It is both impractical and inappropriate for an employer to ask such questions of an employee, making it impossible for the owner to determine who is or is not a qualified candidate for such individual assessments.

We recommend that proposed standards encourage flexibility in the criminal screening process, but not require it.

Evictions

Screening reports do not provide the details of the eviction complaint. Without reviewing the complaint it is impossible to know if the eviction was for non-payment of rent or another issue. While many jurisdictions make court records available on-line, other jurisdictions do not. As with criminal convictions, the availability of an individual assessment should be based on the owner's discretion.

We recommend that the proposed standards encourage flexibility but do not require it.

Rejected or Ineligible Applicant Notification

We believe that this proposed standard is unnecessary because adverse action letters are required by the Fair Credit Reporting Act.