

Tenant Selection Plans: Specific Content for Layered Properties

by AJ Johnson, president of AJ Johnson Consulting Services

Many agencies that oversee housing programs require formal Tenant Selection Plans (TSPs). This includes the Department of Housing and Urban Development (HUD), Rural Development (RD) and some state Housing Finance Agencies (HFAs). There are also circumstances where local housing agencies — such as those in New York City, Chicago and San Francisco — may require formal TSPs.

The basic elements of TSPs are generally the same, regardless of the specific program requiring the plan. In this final article of the three on TSPs, we will discuss the specific elements that should be included in TSPs for “layered” projects, i.e., those with multiple programs.

The first component of any TSP should be a general overview of the plans’ purpose, including:

- Basic description of the property (e.g., family or senior)
- Unit distribution (number of bedrooms/layouts)
- Rent structure
- Clear statement of fair housing compliance.

Following this introduction, for layered properties, the following elements should be included and described.

Income Limits

The TSP should specify the income limits that apply to the site. The actual dollar amounts should not be used, because these may change from year-to-year, but the plan should outline eligibility restrictions related to income (e.g., if the income is restricted to 80% of the area median income). Any special income targeting requirements, such as those required by Housing Finance Agency Extended Use Agreements, also should be outlined.

Since the creation of the Average Income (AI) Minimum Set-Aside, the options for income limits at LIHTC properties have increased significantly. When creating a TSP for an AI property, management should pay close attention to the unit designations that have been selected by the owner, keeping in mind that for LIHTC purposes, an AI property may have as many as seven income designations (20%, 30%, 40%, 50%, 60%, 70% and 80%).

In the case of layered projects, the most restrictive of all the program income limits should be shown. For example, if the project has HUD Project-Based Rental Assistance and LIHTC, the TSP should state that incomes will be restricted to 50% of the area median gross income (AMGI) but, in certain cases, may permit income as high as 60% of AMGI.

Site-Specific Requirements

The TSP must specify whether the site is designated for a special population, such as the elderly, disabled, homeless, veterans, etc. Any preferences should be identified, along with a description of how the preferences will be verified. Any exceptions to preference rules should be delineated, and every TSP should include a requirement that the apartment be the sole residence of the tenant.

Note that HUD does not approve TSPs unless there are local or residency preferences.

Citizenship/Immigration Status

Some programs (e.g., HUD and RD) have requirements relative to residents' immigration status. If these requirements apply, they should be outlined in the TSP. This section is not required for programs without restrictions relative to immigration status. Unless a LIHTC property is subject to the rules of a HUD or RD program, citizenship/immigration requirements will not be relevant.

If the project has HUD or RD assistance, the TSP must describe agency restrictions on housing assistance to noncitizens and the procedures for verifying immigration status (and citizenship, if the owner chooses to verify the status of applicants claiming U.S. citizenship). The plan must also outline the procedures for a temporary deferral or termination of assistance in cases where applicants cannot prove or the owner cannot verify their eligibility.

Social Security Number Requirements

As with immigration status, some programs require that applicants provide Social Security numbers (SSNs). In other cases, it is a requirement of a property owner. In either case, if there is such a requirement, it should be spelled out in the TSP.

If the project has assistance from a program that requires SSNs (e.g., HUD), the plan must describe that agency's requirements regarding the provision of SSNs.

Application & Selection Procedures

The TSP should clearly outline the procedure for taking applications.

- Will pre-applications be required?
- Is there a waiting list, and if so, what is the procedure for being selected from the list?
- How will preferences figure into selection of applicants?
- Is there a lottery process?

Many affordable housing programs use a lottery for selecting applicants. For layered projects, the TSP should state the following:

- Unless the waiting list is closed, applications will be accepted from anyone wishing to submit one;
- Every applicant will be interviewed, followed by a list of topics that will be discussed during the interview. The following topics must be covered and should be stated in the TSP:
 - All information on the application will be confirmed and verified;
 - Program requirements will be explained;
 - Information on family income and composition will be obtained;
 - All household members age 18+ will be required to sign “Consent to Release of Information” forms;
 - Declaration of citizenship forms will be required;
 - For HUD projects, a statement regarding the use of Enterprise Income Verification (EIV) reports is required;
 - A “Disposition of Assets” certification will be required;
 - SSNs will be required of all household members;
 - A final decision on eligibility cannot be made until all verifications are complete; and
 - Applicants will be provided with all program-required fact sheets and related handouts.
- Preferences: The plan must define each preference adopted for use at the site, and any rating, ranking or combining of the preferences. Acceptable sources of information to verify a preference qualification are required.

Income Targeting

For Section 8 properties only, a description of HUD’s extremely low-income (ELI) targeting requirement must be included in the TSP.

- How and when will applicants be “skipped over” in favor of an ELI household?
- How will the application of the “skipped” household be treated?

Applicant Screening Criteria

All criteria that will be used in screening applicants for project eligibility should be fully explained in the TSP. This includes policies relating to credit checks, landlord references, criminal screening, home visits and any other type of screening. Specifics regarding each element should be explained. For example, if landlord references are checked, how many instances of non-payment or other lease violations will be grounds for rejection, and how far back in time will you

look? The same is true for criminal and credit screening; note how far back will you go and what are the specific elements that will result in rejection.

- If home visits will be conducted, the TSP should provide a very detailed description of how they will work. For example: What is the distance limitation for conducting home visits (e.g., 50 road miles)?
- When will the visit take place (e.g., when the applicant reaches the top of the waiting list or has passed all other screening criteria)?
- What will be examined during the visit (e.g., other occupants, pets, housekeeping, criminal activity)?

For properties with HUD assistance, the plan must describe the site's standards used to screen for information on drug-related or criminal activity — including sex offender registration. It must also state the use of the EIV Existing Tenant Search.

Reasons for Rejection

The Plan should describe the circumstances under which the owner will reject an applicant. If extenuating circumstances will be considered prior to formal rejection, the procedures for such consideration should also be described. Examples of rejection criteria could include:

- Insufficient or inaccurate information on an application;
- Credit/financial standing;
- Criminal convictions/current drug use;
- Household characteristics [e.g., too many people for the unit size]; and
- Unsanitary housekeeping.

For HUD-assisted projects, the following reasons for rejection must be included in the TSP:

- The household is not eligible for occupancy at the project;
- SSNs are not provided for all household members (except those who do not claim eligible immigration status or were 62 or older on Jan. 31, 2010, and whose initial determination of eligibility began before Jan. 31, 2010);
- Any household member age 18+ refuses to sign required consent forms;
- The household has characteristics that are not appropriate for certain types of unit or is not of an appropriate size for available units. (Such households must be kept on the waiting list);
- The household contains members who did not declare citizenship or non-citizen status, or sign a statement electing not to contend non-citizen status; and
- Applicant does not meet site screening criteria.

Exceptions to rejection criteria and rejection procedures should also be included in this section of the TSP.

Occupancy Standards

A critical component of any TSP is a clear description of occupancy requirements. How many people may occupy a unit? What is the basis for the standard — i.e., is it a local ordinance requirement or an owner standard? Procedures for placing applicants on waiting lists for different size units must be explained.

Unit Transfer Policies

When will existing residents be permitted to transfer between units? Will requests for resident-desired transfers be accepted, or will there have to be a specific need for the transfer, such as a change in household size or as a reasonable accommodation?

Non-Discrimination Policies

Every TSP must fully describe the reasonable accommodation procedures that the property will follow, and clearly state that all applicable fair housing laws will be followed.

HUD also bans discrimination based on sexual orientation, gender identity or marital status in HUD-assisted properties. Such projects should include language such as: “Management will not discriminate on the basis of race, color, religion, national origin, sex, disability, familial status, sexual orientation, gender identify, marital status or age (except when age is related to eligibility), in any phase of the occupancy process.”

HUD and RD projects should also include a section in the plan regarding the requirement to comply with Section 504 of the Rehabilitation Act of 1973.

Policies on Opening and Closing Waiting Lists

If a waiting list will be maintained, a clear explanation of how the list will be managed should be included in the plan.

- How will applicants be selected from the list?
- When will a waiting list be closed (and re-opened)?
- When can an applicant’s position on the wait list be changed and when will they be removed?
- How will applicants be contacted?
- How often is the list purged and/or updated?

Note: For HUD Section 8 projects, waiting lists may be closed only if it will be at least a year before a unit would become available. This must be stated in the plan.

Special Eligibility Requirements

Any unique eligibility requirements should be outlined in the plan. For example, some programs have specific student rules, some properties are specifically for seniors or the disabled, and others may be for the homeless or domestic violence victims.

For LIHTC properties, the student requirements in particular should be clearly explained. The TSP should include how a student household is defined for LIHTC purposes. The five ways in which a student household may qualify should be included.

For HUD and RD properties — as well as properties with HOME funds — the HUD student eligibility requirements must be stated.

Violence Against Women Act (VAWA) Protections

Documentation regarding VAWA protections must be included in TSPs for Section 8 properties only. The TSP, as well as House Rules (if any), must include policies and procedures covering the VAWA protections. Specific requirements are covered in HUD Handbook 4350.3, par. 4-4(C)(9). The following elements must be included in the plan:

- Owners must provide notice to Section 8 tenants of their rights and obligations under VAWA;
- Owners must provide tenants the option to complete the HUD prescribed domestic violence certification form or provide other documentation of domestic violence;
- Owners are not required to demand that an individual produce official documentation or physical proof of status as a victim in order to receive the protections of VAWA; and
- Owners must have tenants sign the VAWA lease addendum.

The elements noted in this article should be part of any TSP with layered project requirements. Such projects will most commonly combine LIHTCs with some form of federal financing, such as HUD or RD. Finally, owners should review TSPs annually to ensure that they reflect current operating practices, program priorities and agency requirements.

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