

Tenant Selection Plans: Specific Content for Low-Income Housing Tax Credit Properties

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Many agencies that oversee housing programs require formal Tenant Selection Plans (TSPs). This includes the Department of Housing & 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 article on TSPs, we will discuss the specific elements that should be included in TSPs for Low-Income Housing Tax Credit (LIHTC) properties. In the final article in the series, we will cover specific components for properties with layered programs.

The first component of any TSP (Plan) should be a general overview of the purpose of the Plan. This will include a basic description of the property (e.g., family or senior), unit distribution (number of bedrooms/layouts), rent structure and a clear statement of fair housing compliance. Following this introduction, for LIHTC 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. For example, if the income is restricted to 60% of the area median income, this should be stated. 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%).

Site-Specific Requirements

- **Citizenship/Immigration Status**

Some programs (e.g., HUD and RD) have requirements relative to the immigration status of residents. If these requirements apply, they should be outlined in the TSP. (We will provide greater detail on this in the third article in the series.) This section is not required for programs with no 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.*

- **Social Security Number Requirements**

As with immigration status, some programs require that applicants provide Social Security numbers. 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. *The LIHTC program federal regulations have no requirement for Social Security numbers.*

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? It should be noted that many affordable housing programs use a lottery for selecting applicants, and the use of lotteries is becoming more common for LIHTC properties.

Setting Up a Lottery Selection Procedure

Any time there is more demand for affordable units than there are available units, use of a lottery process should be considered. The beauty of a lottery is that it is not up to the owner or manager to decide who is selected for occupancy. It is not personal; as long as the system is set up properly, the process will be fair. Although specific requirements may vary based on location and program, there are some common elements to every good lottery system.

- **Know the Purpose of the Lottery:** The purpose of a lottery is to determine the order applicants will be placed on a waiting list. It does not determine eligibility, nor does it

guarantee a unit for an applicant. With a lottery, applications are accepted over a specified period of time, and the order in which people apply will not affect their position on the waiting list. This avoids “camping out,” and eliminates the disadvantage to working families and the disabled.

- **A lottery is objective:** Names or numbers assigned to names are randomly drawn and placed on the waiting list in the order selected.
- **The Lottery Plan must be transparent:** Whether for a new lease-up or a waiting list for an existing property, the rules for the lottery must be clearly and accurately stated in the TSP and in all advertising. Marketing the opening of a waiting list is one of the crucial steps in ensuring that projects are “available to the public.” How and when will applications be accepted? If the application period is too short, it could be a disadvantage to the disabled or those for whom English is not their first language, leading to potential fair housing claims. If the time frame is too long, the sheer number of applicants could be overwhelming. When deciding how long to leave the application period open, consider the number of units available, the number of applications typically received and what would be a reasonable period of time for disabled and individuals with limited English proficiency to learn of the housing opportunity and obtain necessary assistance in taking part in the process.
- **How will applications be accepted?** Will applications be accepted in person, online or by mail? Where will they be accepted (e.g., at the site, a corporate office or a centralized temporary location)? What is deemed acceptance (e.g., receipt, postmark, electronic transmission)? The best systems incorporate all the possible ways to transmit applications.
- **How will preferences be applied?** Preferences affect the order of an applicant on a waiting list. Common preferences at LIHTC properties include (1) live/work preferences; (2) disability; (3) homelessness; and (4) veteran status. The lottery protocol must clearly specify how the eligibility for preferences will be verified.
- **Be transparent:** One of the best ways to do this is to conduct a public lottery or one with independent observers, such as government officials, representatives from local nonprofits or tenant advocate groups. Another option is to have an independent third party conduct the lottery and “certify” the results.

A lottery can be a very effective method for selecting residents for high-demand projects, but it requires consideration of both legal requirements and practical concerns.

Applicant Screening Criteria

All criteria 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? How far back in time will you look? The same is true for criminal and credit screening. 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 it 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 looked for during the visit (e.g., other occupants, pets, housekeeping, criminal activity).

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)
- Unsanitary housekeeping

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?

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.

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?

Special Eligibility Requirements

If the property has any unique eligibility requirements, they should be outlined in the Plan. For example, some programs have specific student rules, some properties are specifically designated for seniors or disabled individuals, and others may be designated for homeless individuals 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, and the five ways in which a student household may qualify should be included.

The elements noted in this article should be part of any Tenant Selection Plan relating to LIHTC properties. Keep in mind that properties that are subject to other federal or state programs will often have distinct requirements relative to TSPs. The final article in this series will explore requirements and recommendations specific to HUD and RD properties.

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