



Housing Providers Rights and Responsibilities Under Federal and Massachusetts State Fair Housing Law

Massachusetts January 2011

Written by:
Debbie Pilch, Esq.
Pilch Associates

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ACKNOWLEDGMENT AND DISCLAIMER

PILTCH ASSOCIATES, INC., MassHousing, and The New England Affordable Housing Management Association (NEAHMA) produced this handbook by gathering information from various documents and individuals. Due to the potential for errors, omissions, or inaccuracies, which may exist in the materials and information provided, there is some risk associated with reliance on such information. Contact an attorney regarding any legal matter related to the information contained in this handbook involving an applicant for housing or tenant.

MassHousing

About MassHousing:

MassHousing (officially the Massachusetts Housing Finance Agency) was created by Chapter 708 of the Acts of 1966 as a self-supporting, independent public authority charged with increasing affordable rental and for-sale housing in Massachusetts. MassHousing made its first loan in 1970, and has since invested more than \$9.9 billion to finance more than 88,000 apartments and 55,000 loans for homeowners and homebuyers throughout the state. For more information, visit the MassHousing Web site at www.masshousing.com.

New England Affordable Housing Management Association (NEAHMA)

About NEAHMA:

The New England Affordable Housing Management Association was formed in 1989 to facilitate communication between management agents and local HUD and state housing finance agencies. Monthly membership meetings include a period devoted to training and education on current regulatory topics as well as current housing updates provided by agency representatives. Members have an on-going opportunity to attend NEAHMA sponsored educational sessions relevant to affordable housing.

NEAHMA is a member of the National Affordable Housing Management Association. Founded in 1990, NEAHMA is the nation's largest association for managers and owners of privately owned, government-assisted housing. NEAHMA advocates for an adequate supply of multifamily, residential affordable housing by bringing nationwide attention to the necessity of preserving decent, safe and sanitary housing and building a solid partnership with HUD, Congress and other concerned participants. NEAHMA offers a series of designations for housing professionals to show that they have met the highest standards in the industry. These include the National Affordable Housing Professional (NAHP) designation, as well as the National Affordable Housing Maintenance Supervisor (NAHMS) and the National Affordable Housing Maintenance Technician (NAHMT) designations.

NEAHMA's membership consists of owners and management agents who represent over 50,000 units of affordable housing throughout New England complimented by a strong contingent of associate vendor members. As an organization representing affordable housing professionals, NEAHMA addresses housing issues at the national, state and local level. HUD and housing finance agencies actively support NEAHMA as a means to ensure Communities of Quality throughout New England.

About the Author:

Debbie Piltch is a graduate of Penn Law School and has worked in the field of discrimination and housing law for over twenty years. She served on HUD's Occupancy Task Force and wrote the section of this report dealing with drug and alcohol addiction. She co-wrote several Reasonable Accommodation handbooks with Ann Anderson of ADA Consulting for MassHousing. Debbie worked for several years at the Disability Law Center in Boston and has done training and consulting around the country for HUD, the National Affordable Housing Management Association (NAHMA), the New England Affordable Housing Management Association (NEAHMA), and various government agencies,

housing authorities and housing management companies for over fifteen years. She has written numerous training programs on topics related to Fair Housing and compliance with Federal and State requirements in Affordable Housing and the Tax Credit Program. She has also served as an independent monitor for the MA State Attorney General's Office in a discrimination case. Attorney Piltch is currently employed by **Maloney Properties**, Inc. as Director of Compliance.

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To obtain a large print, tape, or diskette version of this Handbook, contact MassHousing at (617) 854-1077, VP (866) 758-1435, FAX (617) 854-1028.

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Fair Housing Operating Guide

The purpose of this Operating Guide is to assist staff who work in federally and state subsidized housing in understanding the legal requirements that you can't discriminate against someone because of their race, the color of their skin, what country they or their ancestors are originally from, their religion, if they are male or female, if they have children or foster children under the age of 18 or are pregnant, if they have a disability, or any other reason prohibited by state or local law such as marital status, sexual orientation, and veteran status or membership in the armed forces. Treating people fairly is a simple concept. However, it can be difficult to understand how this concept affects how you can and can't do your job.

Each of us may have preconceived ideas about people from various protected groups of people. It is important that you perform your job in a way that isn't based on your assumptions about people but rather that you perform your job in a nondiscriminatory way. You must make sure that you treat applicants and tenants as individuals and that you make no assumptions based on protected status - factors that have nothing to do with merit and that the law says you can't make decisions about.

It is also crucial that you know your site's funding sources, and its eligibility and suitability requirements, and be able to explain these criteria in simple language to applicants and residents to avoid claims of discrimination. Likewise, you must be able to consistently answer standard questions typically asked. Inconsistencies and inaccurate information leads to feelings of mistreatment and claims of discrimination. We have provided a sample of such questions to assist you in the Appendix.

To the degree possible, this guide avoids legal jargon. These materials are presented in a question and answer format and are divided into topics that focus on the occupancy cycle. You will see that some questions have very clear answers. For other questions, there are several opinions about what is the correct answer. That is because sometimes the law is so new or general that lawyers have different opinions about what it really means. The final answers will

be determined over time as various regulatory agencies and courts make decisions on situations where the parties disagree. Most management companies in Massachusetts have rules, policies and procedures that address Fair Housing related issues, as well as maintenance and safety. **You need to be familiar with how your company wants you to handle a particular situation.**

The Appendix to this guide also provides a chart that summarizes the various federal and state anti-discrimination laws. This chart details what type of housing these laws apply to, what these laws require housing providers and site staff to do and what these laws require housing providers and site staff not to do, as well as who enforces each law.

COMMONLY ASKED QUESTIONS

A. GENERAL QUESTIONS

1. What Is Discrimination?

If you look up the word "discriminate" in a dictionary it generally states that it means to distinguish or make a distinction between two like things. Each of us "discriminates" numerous times everyday. For example, we discriminate when we make choices between what to eat for a meal, what sneakers to buy, and what television show to watch. Obviously, many types of "discrimination" aren't illegal. Property managers and site staff "discriminate" all the time when performing their jobs. For example, every site has a tenant selection plan that sets criteria that requires managers to make distinctions between applicants based on legitimate, objective factors relating to eligibility and suitability for tenancy. However, the criteria contained in the tenant selection plan can't be based on "illegal criteria". Likewise, sites typically have a set procedure in place for responding to maintenance requests in accordance with date and time of the request, unless it is an "emergency". This requires maintenance providers to distinguish or discriminate between situations.

2. What Makes Discrimination Illegal?

Not all types of discrimination violate Federal, State or local civil rights laws. Discrimination is illegal when you differentiate based on certain characteristics that the federal, state and or local government has determined you can't base your actions on, including but not limited to:

Race

Color

Religion

Sex

National Origin

Familial Status

Disability

Age

Marital Status

Sexual Orientation

Ancestry

Genetic Information

Veteran status or membership in the armed forces

Receipt of Public Assistance

Groups of people who are covered by civil rights laws, such as these, are called “protected classes.” What this means is that you can’t treat people unfairly because of their protected status: because of their race, color, religion, sex, national origin, familial status, disability, age, marital status and sexual orientation. Some laws also require owners/managers of affordable housing to take affirmative steps to make sure people in various protected classes have an equal opportunity to apply to and live in their housing.

For example, let’s go back to the examples in **Question 1** above regarding the tenant selection plan and responding to emergencies.

If a site’s rejection standards allow management to reject someone who is convicted of a felony, it isn’t illegal if you reject someone on that basis, even if they are in a protected class. It is however illegal if you apply this rejection criteria only to people of one race and not another. Likewise, it isn’t illegal for a maintenance provider to respond to an emergency situation ahead of regular maintenance requests assuming the site’s definition of an emergency isn’t based on illegal factors such as the race of the person saying it’s an emergency.

3. What Makes Up The Law?

The “law” is made up of several kinds of rules:

a) Statutes

Statutes are a written collection of rules passed by Congress or a State Legislature. There are a lot of statutes discussed in this Operations Guide, such as the Federal Fair Housing Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Title VI of the Civil Rights Act.

b) Regulations

When statutes are passed, government agencies are responsible for administering the statute's requirements. To help do this, they create and implement regulations that explain what an entity has to do to comply with a statute. Usually when a government agency creates regulations they publish draft regulations and ask the general public to comment. The agency reviews the comments and publishes final regulations. Usually the final regulations include a "preamble" or introduction that review the comments received on the draft regulations. It also explains the thinking or interpretation behind the final regulations. For example, the Department of Housing and Urban Development (HUD) passed a set of regulations implementing the Federal Fair Housing Act, and it has a "preamble" that discusses each section of the regulations, the comments received on the draft regulations and what HUD thinks the regulations say.

c) Constitution

The U.S. Constitution is the highest form of law. It sets standards for the equal protection of citizens and due process (fair procedure). It's not usually used in housing discrimination cases. States, such as Massachusetts, also have constitutions.

d) Executive Orders

Executive Orders are issued by the President of the U.S., the Governor of a state or a city's Mayor, to set requirements for behavior, operations or policy for agencies of government. There are a number of Executive Orders that involve discrimination in housing that have been issued by the President. For example:

Executive Order 11063: Prohibits discrimination in the sale, leasing, rental or other disposition of properties and facilities owned or operated by the federal government with federal funds.

Executive Order 12892: Federal agencies must affirmatively further fair housing in programs and activities, and the Secretary of HUD will be responsible for coordinating the effort.

Executive Order 13166: Eliminates, to the extent possible, limited English proficiency as a barrier to full and meaningful participation by beneficiaries in all federally-assisted and federally conducted programs and activities.

e) Administrative Directive System

Government agencies that provide funding and/or loans to a site usually have a system in place to communicate with its staff and program participants regarding what they must do, should do and may do. This terminology is extremely important. The use of the term “MUST” is easy to understand. It means you have to do it. MAY is also fairly easy to explain. It means you have permission to do something. The use of the word “SHOULD” is a little trickier. It’s a very strong recommendation that you do something.

There are a number of important directive systems that you need to be aware of: For example, if the site where you work receives money from the Department of Housing and Urban Development (HUD) it is considered “assisted housing” or is a Public Housing Authority and your site needs to follow HUD’s directive system. HUD’s directive system for assisted housing providers is generated from HUD’s Office of Multifamily Housing and consists of notices and handbooks. For example, Handbook 4350.3 REV-1 is a “rule book” on the occupancy, policies, and procedures governing many HUD subsidized, multifamily programs. Fair Housing requirements are summarized in Chapter 2 of this Handbook and discussed throughout the 4350.3 REV-1 as they apply throughout the occupancy cycle: admissions, occupancy and eviction. This Handbook can be found at <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/index.cfm> HUD’s directive system for Public Housing Authorities is generated from HUD’s office of Public and Indian Housing and Handbooks and Notices. All of HUD’s Fair Housing Notices and Handbooks can be located at www.hud.gov/hudclips.

If the site you work at is funded or financed through a State agency, you will need to follow that Agency’s directive system as well. For example:

If your site was financed by MassHousing, you need to follow its directive system. MassHousing's notices and forms for property managers can be located at

<https://www.masshousing.com/portal/server.pt?mode=2&uulD={29C06E9D-D690-44CA-A1F5-5EE973344E9A}>

If your site is in MA and is state-aided public or private housing, you must follow the MA Department of Housing and Community Development's (DHCD's) Directive system. DHCD's website is located at:

<http://www.mass.gov/?pageID=eheadagencylanding&L=4&L0=Home&L1=Economic+Analysis&L2=Executive+Office+of+Housing+and+Economic+Development&L3=Department+of+Housing+and+Community+Development&sid=Ehed>

f) Case Law

Case law refers to the written decisions by courts and administrative agencies. These decisions are written by judges and interpret statutes, regulations and administrative directive systems. Case law is important because it lets us know what judges think the law requires. Judges are human beings who interpret the facts of the case, and apply the facts to what they believe statutes, regulations, and directive systems require. Sometimes judges interpret the law consistently and sometimes they don't.

4. Who Has To Comply With Fair Housing Laws?

Federal and state fair housing laws apply to everyone associated with housing, including **everyone** who works at your site and for your company. This includes all administrative and support staff at your company's corporate office (such as the IT Department, the Accounting Department, the Compliance Department, etc.) as well as all site staff including, but not limited to, Maintenance Supervisors, Custodian/Janitorial Staff and Safety Personnel, Assistant Managers, Occupancy Specialists, Resident Service Coordinators, Managers and Regional Managers. If any employee acts in a discriminatory manner the individual as well as the company you work for may be held accountable.

Also, some laws require companies to include in any contract they sign with entities for maintenance services, safety services, landscaping and other services a clause that prohibits contractors from discriminating. If you witness a contractor engaging in unprofessional or discriminatory behavior you need to report it to management. Likewise, sometimes contractors will make comments directly to site staff about residents that are inappropriate, such as “she’s a hot one.” A contractor’s behavior is a reflection on site staff. You’re not “finking” on anyone or “ratting anyone out”. If you do not do anything to prevent the discriminatory behavior that you witness or are made aware of by a resident, then you are allowing it to continue and that can be considered discriminatory as well.

5. What Laws Apply to My Site?

There are a number of federal, state and local statutes that may apply to the site that you work at and to you. In order to identify which laws apply you need to know what subsidies (if at all) your site receives, how it was financed, and what the site’s controlling documents require. The only way to be sure of all of the funding/financing sources or what these entities required is to review the site’s controlling documents. If you are unclear about your funding sources or what laws apply, ask your supervisor for help. The funding sources and the applicable laws your site is required to follow should also be reflected in your Resident Selection Plan.

There are two non-discrimination statutes (rules passed by the federal or state legislature) that apply to all sites in Massachusetts regardless of whether your site was funded with federal and/or state dollars or who it was financed by. One is a federal statute called the Federal Fair Housing Act or the Fair Housing Act. The other is M.G.L. c. 151 B.

Also, if you work at a site that was financed with federal dollars other laws will apply, including the Rehabilitation Act (disability), Title VI of the Civil Rights Act (race, color, national origin) and the Age Discrimination Act (age). The Americans with Disabilities Act (ADA), which protects people with disabilities, may apply to your site as well. This law is divided into sections called Titles. If your site is operated by or significantly financed by a state or local government entity (such as a PHA or MassHousing, or a city such as Boston) it would be

covered by Title II of the ADA. Even if your site doesn't receive any state or municipal funding, Title III of the ADA would apply to all of the parts of your development that are considered "public accommodations" such as the management office, and the community room if you open it to the general public.

Don't forget that agencies that enforce statutes provide regulations and/or guidance that explain what the statutes require and allow sites to do.

Also, if your site is funded by a government agency, such as the Department of Housing and Urban Development it must follow that agency's rules. For example, if your site is funded by HUD, you must follow the rules contained in HUD Handbook 4350.3 REV-1. Chapter II of this Handbook summarizes Federal non-discrimination requirements and lays out for housing providers that receive federal funding from HUD what they must do, should do, and can do when it comes to Fair Housing. Fair housing requirements are also incorporated throughout the rest of the Handbook which discusses all aspects of housing management.

6. Who Does the Federal and State Fair Housing Laws Protect From Discrimination?

The Federal Fair Housing Act says that you can't discriminate against someone on the basis of race, color, religion, sex, national origin, familial status and disability. Massachusetts' state law is broader and contains more protected classes.

Massachusetts prohibits discrimination on the basis of these categories as well as others including sexual orientation, marital status, age, ancestry, genetic information, veteran status or membership in the armed force and because someone receives public assistance.

Also, local laws often protect different or additional groups of people.

It is often unclear what the law refers to within some of these categories, so we have provided you a little guidance:

a) Age: The word “age” isn’t meant to prohibit owners from refusing to rent to unemancipated minors or to prohibit Elderly housing. Rather, it is meant to prohibit actions based on assumptions typically associated with being “young” or “old.”

b) Color: Literally the color of someone’s skin; including how light and dark a person’s skin is. The reason for this is that sometimes people experience discrimination based on whether they are a light complexioned or dark complexioned person of color. This protected class reflects that people can experience discrimination by people who are the same race.

c) Disability: The definition used in federal and MA discrimination law is very similar and is very broad. This definition **is not the same as any eligibility definition** of a person with a handicap/disability to get into public or assisted housing or to be eligible for certain allowances against income. It is much easier for a person’s disability to satisfy the civil rights definition than the eligibility definition. It recognizes that people are discriminated against because: 1) they have a disability; 2) they used to have a disability (a record of such an impairment); and 3) someone thinks they have a disability (is regarded as having such an impairment). The third prong of this definition is sometimes the most confusing to people so an example may help illustrate this concept. Assume that someone has lesions on their face, arms and legs. You might think that the person has AIDS and refuse to admit them into your housing; or a maintenance provider may refuse to fix something in their unit because they’re afraid of getting AIDS. The law says that even if the person doesn’t have AIDS, your actions would be illegal because you refused to do work in the unit because you assumed the person had AIDS.

A disability is defined as any physical or mental impairment (including practically any condition, disease, illness, disfigurement or disorder e.g. alcoholism, AIDS, emotional disorder, cerebral palsy, cancer, deafness, HIV infection, etc.) so long as the impairment “substantially limits a major life activity”. It is important to understand what the term “substantially limits” and “major life activity” mean. “Substantially limits” means limits a lot a major life activity” is a very broad term and includes, but isn’t limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, learning and working, managing your finances).

d) Familial Status: The law protects households with children and people who are pregnant. The law recognizes that sometimes children live with people other than their parents. For example, the law says you can't discriminate against any household consisting of a child (someone 17 or under) living with his/her parent, legal guardian or designee of either, and anyone who is in the process of securing legal custody of an individual who is under the age of 18.

e) Genetic Information: This includes any information you inadvertently become aware of (because you're not allowed to have medical records) relating to the results of genetic testing or family history pertaining to the presence, absence, variation, alteration, or modification of a human gene or genes.

f) Marital Status: This means treating someone differently because of his or her marital or relationship status. In other words, because the person is married, widowed, divorced, single, or unmarried with a same-sex or opposite-sex partner.

g) National Origin: This means treating someone less favorably because he or she or the ancestors comes from a particular place, because of his or her ethnicity or accent, or because it is believed that he or she has a particular ethnic background. A "national origin group" is a group of people sharing a common language, culture, ancestry, and/or other similar social characteristics.

The two ethnic categories reflected on the Department of Housing and Urban Development's Data Collection Form are:¹

Hispanic or Latino. A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term "Spanish origin" can be used in addition to "Hispanic" or "Latino."

Not Hispanic or Latino. A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

h) Public Assistance: This is included only in some state laws, but some Federal housing programs also prohibit discrimination on the basis of public

¹ See <http://www.hud.gov/offices/adm/hudclips/forms/files/27061.pdf>

assistance. The definition includes applicants and tenants who have mobile vouchers from a Housing Authority or agency to help pay the rent on a unit. It would also cover households that receive public assistance income such as welfare. In the case of a person with a voucher, it would not be discriminatory to refuse to permit someone with a voucher to rent your unit if the voucher didn't cover the rent.

i) Race: These categories are sociopolitical constructs and people can consider themselves as part of more than one race. The Department of Housing and Urban Development and State Agencies collect data on Race. HUD's form² that is used to collect data on the racial composition of applicants and residents utilizes the following five race categories:

American Indian or Alaska Native. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American. A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black" or "African American".

Native Hawaiian or Other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White. A person having origins in any of the original peoples of Europe, the Middle East or North Africa.

j) Religion: This includes, but isn't limited to the following world religions: Atheism, Baha'i, Buddhism, Candomblé, Christianity, Hinduism, Islam, Jainism,

² IBID.

Jehovah's Witnesses, Judaism, Mormon, Paganism, Rastafari, Santeria, Shinto, Sikhism, Taoism, Unitarianism, and Zoroastrianism. This can also include discrimination by people who practice the same religion, but different sects within a religion. It also forbids discrimination against people who follow no religion.

k) Sex: This includes being treated differently based on the person being male or female and includes sexual harassment. The latter is **unwelcome** verbal, visual, or physical conduct of a sexual nature that is severe or pervasive and affects a resident's housing conditions or creates a hostile living environment. Most companies have a Sexual Harassment Policy and a non-fraternization policy. Make sure you are familiar with your company's applicable policies.

Some courts have also found that sex discrimination includes discrimination on the basis of gender-identification. This term refers to how a person identifies as a man or a woman, as opposed to his/her anatomical sex at birth. Usually, one's gender identity matches one's anatomical sex: people born with the physical characteristics of males usually identify as men and those with physical characteristics of females identify as women. However, for some people this isn't the case.

Some courts have also found that negative actions against a victim of domestic violence when the actions are based on gender stereotypes, such as giving someone a hard time because the abuser broke a window thereby assuming that the victim either somehow caused the behavior or allowed it to happen. Advocates also argue that management policies regarding zero tolerance of criminal behavior or destructive behavior occurring in a home can constitute sex discrimination due to their disparate impact on women, unless management had a really good reason to justify the policy.

Also please note that there is a Federal law (not a discrimination statute), the Violence Against Women Act (VAWA), that specifically states that a Public Housing Authority (PHA), can't deny someone housing or a voucher because he/she has been a victim of domestic violence, dating violence or stalking.³ It also prohibits private landlords who accept vouchers and those providers whose sites have a project based Section 8 subsidy from refusing to rent to someone because he/she is a victim of domestic violence, dating violence or stalking. It

³ This doesn't mean that you can't reject someone because they aren't eligible for housing or not suitable for housing based on your Tenant Selection Plan. It also doesn't mean you can't evict someone for violating their lease, such as for non-payment of rent.

also prohibits Public Housing Authorities and private housing providers from evicting someone from public housing and Public Housing Authorities from terminating his/her voucher just because he/she is a victim of domestic violence. Public and assisted housing providers and private landlords who accept vouchers may, however, evict a victim of domestic violence, dating violence or stalking if there is an “actual and imminent threat” to other tenants or staff if the victim isn’t evicted. Likewise, a PHA may terminate a voucher using the same standard. The law also allows a housing provider to “bifurcate” the lease in cases involving domestic violence, and evict an abuser while allowing the rest of the family to stay in the unit. These requirements, if applicable to your site, must be incorporated into your site’s Resident Selection Plan.

I) Sexual Orientation: This is included only in state law. This requires you not to discriminate against someone because they are attracted to and/or sexually involved with someone of the same or opposite gender, or attracted to or involved with both genders (bi-sexual) or is trans-gendered (someone in the process of or having completed medical procedures to change the birth physical gender). The law makes it very clear that this isn’t the same as adults who use children as sex objects (sex offenders). Homophobia is the term used to describe harassing treatment, fear, hatred, or extreme negative attitudes, feelings and beliefs about lesbian, gay, and/or trans-gendered persons.

7. Do I Have To Comply With All Laws That Prohibit Discrimination That Apply To Me?

Yes. If more than one law applies to you, you can’t pick and choose which law to follow. You have to follow the strictest requirement. It’s just like when you have to follow both the local and state building code; it’s not a defense if you say to a REAC inspector, “oh sorry, I thought I didn’t need to do that because I was following the city’s health and safety requirements and not the state’s health and safety requirements.” Lack of knowledge and ignorance about a law is not a legitimate defense.

8. What Does The Law Mean When It Says You Can't Discriminate?

Federal and state laws include two different types of discrimination: disparate treatment discrimination and disparate impact discrimination

a) Disparate treatment generally refers to discrimination that occurs when a person in a protected class is treated differently from a similarly situated person who is not in the protected class. For example, it is discriminatory to help only white elderly women with their groceries and not help other people with their groceries. Evidence of disparate treatment often times includes the use of words that suggest that a person views people in a protected group differently than people who aren't in the protected class.

b) Disparate impact discrimination generally refers to practices that appear neutral but have a greater negative effect on people in a protected class and can't be justified by a legitimate business reason or even if it can be justified, there is a less discriminatory way to satisfy the business need. For example, requiring everyone to read and sign a lease in English. This rule is neutral in the sense that it is applied in the same way to all residents. However, it is likely to have a greater impact on individuals whose primary language is not English, and individuals with visual impairments, cognitive impairments and mobility impairments. The purpose of such a rule is presumably legitimate: to make sure that the person understands the legal requirements contained in the lease. However, there are other ways to achieve this business goal in a less discriminatory manner. For example, if the lease is available in the resident's primary language, you can provide it to the resident **for informational purposes only**, and have the person sign the English version of the lease.⁴ Another alternative is to attach a notice to the lease in multiple languages that states that if someone has difficulty reading, writing or understanding English because it's

⁴ The HUD model leases for the programs covered by the HUD Handbook 4350.3 are available in 14 different languages: [Amharic](#), [Arabic](#), , [ArmenianCambodian](#), [Chinese](#), [English](#), [Farsi](#), [French](#), [Korean](#), [Portuguese](#), [Russian](#), [Spanish](#), [Tagalog](#), and [Vietnamese](#) at <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>

not their primary language that management will assist them by getting an interpreter if no one on staff speaks their language and can orally translate the document and serve as an interpreter.

Likewise, if your site required everyone wishing to make a maintenance request to do so by filling out a form in English this would also have a discriminatory effect. The purpose of such a rule is presumably legitimate: to make it clear what the person's request is and to have a written record of all requests. However, there are other ways to achieve this business goal in a less discriminatory manner. For example, the form could state that if someone has difficulty reading, writing or understanding English because it's not their primary language that management will assist them by getting an interpreter if no one on staff speaks their language and can orally translate the document and serve as an interpreter. Management can also make it clear that they will help someone fill out the request form if they need assistance and the person's disability affects their ability to comply with this requirement. Another approach is to accept requests over the phone and if the resident doesn't speak English, utilize a Telephone Interpreter Service Line, which can provide immediate interpreter services in over 140 different languages. It is extremely helpful to have a contract with a Telephone Interpreter Service Line because it is highly unlikely that staff will be able to meet the language needs of all applicants.

9. What Do Fair Housing Laws Say Someone Who Works At A Housing Site Can't Do?

Federal and state fair housing laws (statutes, regulations, Handbooks) list specific examples of practices that are illegal. Many of the prohibited practices relate specifically to functions that staff is involved with. The following is a shortened version of what the laws say you can't do on the basis of **any protected class**. Please see the actual Federal Fair Housing Act's regulations and Chapter 2 of HUD Handbook 4350.3 REV-1 for more detailed information. The regulations can be found at: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=24:1.2.1.1.1&idno=24> and Chapter 2 of the 4350.3 Rev-1 can be found at <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503c2HSGH.pdf> Applicable state laws contain similar lists.

a) Refusal to rent or negotiate with someone for the rental of a dwelling. For Example:

A manager refuses to rent to someone because he/she is originally from the Middle East and the manager is afraid that the applicant is a terrorist based on his/her national origin.

A manager refuses to rent to a person with a mental illness because the manager is afraid the applicant is dangerous solely because of his/her mental illness.

A manager of a HUD subsidized elderly site refuses to rent to an elderly grandfather who has custody of his 8 year-old grand-daughter because the manager believes that it will bother the other residents if the child lives there.

b) Engage in any conduct that restricts choices, makes unavailable, or denies dwellings to persons; commonly known as steering. For Example:

An elderly person who has custody of her grandchild applies to live in a HUD subsidized elderly development. She is asked by the manager if she wouldn't rather live in a development where there are more children so her grandchild would have playmates.

An applicant who uses a wheelchair is encouraged to live on the ground floor in an elevator building for "safety" reasons.

A management company provides families with a Spanish surname a selective list of sites so that they can live with people who "they have more in common with."

c) Engage in any form of advertising which indicates any preference or limitation. For Example, the following advertisements are not acceptable:

"Only real Americans need apply."

"No children, no pets."

“Adults Only.”

“Pious community welcomes like-minded people.”

d) Discriminate in the terms, conditions, and privileges of rental, or deny or limit the services and facilities available in connection with the rental of a dwelling.

For Example:

Posting signs that prohibit only children from playing in the parking lot. No one should be playing in the parking lot;

Assisting elderly people and not younger people with disabilities with trash removal;

Storing boxes of supplies in the accessible communal bathroom thereby making it inaccessible to someone who uses a wheelchair or walker;

Parking a maintenance van in an accessible parking spot or blocking a curb-cut with the van;

Asking only men who are black to show identification when entering the building, or identifying who they are visiting before buzzing them in.

e) Provide inaccurate or false information about the availability of apartments or steering them away from renting. For Example:

Telling someone who comes by your HUD subsidized Elderly site who inquires about whether families are allowed to live there that: 1) this is an “elderly-only” site; 2) children aren’t allowed to live on site; or 3) telling them they’d be happier living where there are more children.

A person stops you while you’re landscaping and asks you if there are any 3-bedroom units available. You look up and see that the person is in a wheelchair. You know that even though the development has 3-bedroom units, that none of them are accessible; therefore, you say no.

The neighborhood you work in is almost all black and a family who is of Spanish ancestry comes by and asks you if there are any vacancies. You're concerned that the family won't fit into the neighborhood well so you tell them there are no vacancies and refer them to a nearby site where you believe they would fit in better, even though you know that the site is accepting applications and there isn't a waiting list.

f) Use different qualification criteria or sale or rental standards or procedures such as income standards, application requirements, fees, credit-analysis, or sale or rental approval procedures, or other requirements. For Example:

A company requires all residents with a Spanish surname to provide five years of rental history and everyone else three years of rental history.

A housing provider considers mitigating circumstances only for people who are white.

The person conducting the criminal and credit checks uses a different credit standard for anyone whose national origin isn't the United States.

g) Use different provisions in contracts of sale or leases such as those relating to rental charges, security deposits, and terms of the lease, closing or down payment requirements. For Example:

A housing provider charges any household with children under the age of five an additional \$500.00 security deposit because of the extra wear and tear on the unit that she believes children cause.

A housing provider requires anyone with a Personal Care Attendant to have a rep-payee before being willing to sign the lease.

A housing provider charges an extra fee for everyone who uses a wheelchair because the housing provider is afraid that the person's use of the chair will destroy the base-boards and cause excessive damage to the walls in the unit.

A housing provider charges an additional security deposit for an assistance animal.

h) Fail or delay maintenance or repairs of sale or rental dwellings. For

Example:

Your site has a standard procedure that maintenance repairs are done in the order requested, unless it is a real emergency. However, your site manager tells you verbally to ignore the work order numbers and help the old-time residents who happen to be white rather than the new residents, who happen to be mainly from Bosnia.

You refuse to do any work in a unit because you believe the resident who lives in the unit has AIDS and you're afraid you're going to get the disease.

Your site can't respond in a timely fashion to an emergency call because the person making the request only speaks Spanish and the person answering the phone can't understand him/her and doesn't know how to reach someone who can.

i) Fail to process an offer for the sale or rental of a dwelling or to communicate an offer accurately. For Example:

A real estate broker doesn't tell the owner that an applicant from the Dominican Republic applied for a vacant unit because he knows the owner won't rent to any family from the Dominican Republic.

You are instructed by your resident board not to allow anyone into the development who isn't white. When someone who is of Asian ancestry applies, you "lose" the application.

You are told by the owner not to accept any vouchers and you act accordingly and tell someone that the site can't accept a vouchers even though there is no programmatic reason (such as project based assistance) that you can't.

j) Limit the use of privileges, services, or facilities associated with a dwelling unit. For Example:

Your site has a policy that no one under the age of 18 can use the community room regardless of adult supervision.

The intercom system used by security to let residents know they have a visitor isn't accessible to people who are deaf or hard of hearing, or someone who is blind.

A maintenance provider agrees to drive only English speaking, white elderly women to their doctors' appointments because they remind him of his mother.

k) Employ codes or other devices to segregate or reject applicants. For Example:

A manager places an asterisk ("*") on the application of all residents with an Asian surname because she believes that it is in their best interest if everyone who is of Asian Ancestry lives on the same floor.

l) Deny or limit services or facilities in connection with the sale or rental because a person failed or refused to provide sexual favors. For Example:

A maintenance provider makes it clear to a resident that he/she won't fix a problem in the unit unless the resident dates him/her.

A security guard tells a resident that if she doesn't have sex with him he will ignore the drug dealing taking place on the resident's floor which is endangering her safety.

m) Discriminate against someone because of that person's relationship to or association with another individual. For Example:

A maintenance provider refuses to enter a unit because the resident is involved in a sexual relationship with someone of the same gender and same sex relationships disgust him.

A security guard ignores the complaint of a white woman who states that she is being harassed by her neighbors because her boyfriend is black. The security guard doesn't agree with mixed relationships and thinks the residents are right to harass the woman.

n) Retaliate against, threaten, or act in any manner to intimidate someone because he/she exercised rights under the Federal or State Fair housing law (or a local law). For Example:

A resident files a race discrimination complaint against the site, the owner, and the manager. The manager instructs the maintenance supervisor to ignore all of the resident's work order requests and the maintenance supervisor acts accordingly.

A resident with a disability complains to Management that a maintenance provider asked him a lot of questions about his disability and expressed concern that it wasn't safe for the resident to live alone in his unit. Management tells all maintenance staff to stop talking with the resident at all. The staff follows orders and avoids all conversations with this resident but continues to be friendly and engaging with all other residents.

o) Fail to investigate and address allegations that a tenant or group of tenants is harming or threatening another tenant because of that tenant's protected status. For Example:

A resident complains to the manager that her children are being taunted by a group of kids that live in the development. The resident is black and she claims that the other children are screaming racial slurs at her child. The manager tells her that kids will be kids and that it will work itself out.

A resident who was born in Ghana complains to the site manager that the elderly white women in the development are slamming doors in her face and telling her to go back where she belongs. The manager tells the resident that she has worked at the site for 20 years and that her residents wouldn't do such things and that she must be mistaken.

10. Is A Site Required To Let Applicants And Residents Know The Staff Doesn't Discriminate?

Yes. Staff is responsible for communicating to applicants and residents that it doesn't discriminate. In addition, many companies require site staff to follow specific procedures.

a) Fair Housing Posters

Housing providers are required by the Federal Fair Housing Act to post and maintain a fair housing poster at all sites and places of business. Sites can obtain HUD's "We do Business in Accordance with The Federal Fair Housing Law" poster off the HUD website in English, Arabic, Cambodian, Chinese, Creole, Hmong, Korean, Spanish and Vietnamese at <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>

To ensure equal access to this information for people with disabilities, posters must be hung at a level that someone who uses a wheelchair can read, and one should be displayed in large print.

b) Nondiscrimination Clause/Logo:

The Fair Housing Act doesn't require that a nondiscrimination clause/logo be used. It says this **should** be used, but if you are a program covered by HUD Handbook 4350.3 REV-1 it is a **must** to use the Fair Housing Logo, statement, or slogan. Also, if your site wants to be viewed as affirmatively furthering Fair Housing it should use this logo. It is also some companies' policy that all of their sites utilize this logo.

Also, if your site receives federal dollars it is required to use a statement of non-discrimination on the basis of disability in any recruitment or informational material. Recipients with 15 or more employees have an ongoing obligation to notify applicants, tenants and employees that they don't discriminate on the basis of disability. The notice must also include the name of the person responsible for coordinating its compliance efforts under Section 504 of the Rehabilitation Act. Remember, the site must make sure that such notices are accessible to people

with disabilities and people who have limited English proficiency. Many companies have standard language that is used on notices.

c) Accessible Services, Activities and Facilities:

A recipient of federal dollars must have procedures to ensure interested persons (including people with vision and hearing impairments) can obtain information about the existence and location of accessible services, activities, and facilities. This includes sites using the universal symbol of accessibility or statement when a property is fully accessible and list the TDD number (or 711) everywhere the site's phone number is listed. This includes when you send out all notices.

d) Notice of Non-Discrimination, Reasonable Accommodation and Free Language Assistance

Many companies provide a Notice of Non-Discrimination, Reasonable Accommodation and Free Language Assistance to applicants and residents at recertification. Staff persons at sites that are covered by the 4350.3 REV-1, Par. 4-24 on pg. 4-42 are also required during the application interview to explain the company's obligation not to discriminate. See

http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503c4_HSGH.pdf

e) Violence Against Women's Act (VAWA)

Although VAWA isn't a "discrimination statute" it does protect victims of domestic violence from discriminatory treatment (See Question 6 above) in public and assisted housing at admission and eviction. HUD's notice implementing VAWA provides that the housing provider has a choice when to provide notice of VAWA protection. The HUD-approved certification form (HUD-91066) may be made available to all eligible families at the time of admission or, in the event of a termination or start of an eviction for cause proceeding, the certification may be enclosed with the appropriate notice, directing the family to complete, sign and return the form within fourteen (14) business days. The form is available in seven languages in addition to English: Amharic, Arabic, Armenian, Chinese, Farsi, French, Korean at <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>

11. What Should I Do if an Applicant or Resident Believes They Have Been Discriminated Against by an Employee?

Follow your company's procedure to address applicant and resident concerns.

12. Is The Site Required To Collect Information on Applicants' and Residents' Protected Status?

Whether your site is required to collect data on applicants' and residents' protected status, and what data you are required to collect is dependant on your site's sources of funding/financing.

Title VI of the Civil Rights Act, which prohibits discrimination based on race, color, national origin, requires owners that receive federal dollars (i.e. project-based Section 8, PRACS, PACS, BMIR, 236, CDBG, HOME....) to take affirmative steps to overcome the effects of conditions that result in limiting participation by people of a particular race, color or national origin. It requires owners to maintain racial and ethnic data showing the extent to which members of the minority groups are beneficiaries of federal financial assistance. See Form HUD 27061-H Race and Ethnicity Reporting Form. Ethnicity and Race of applicants and Tenants is determined by **self-certification**. This form is available at <http://www.hud.gov/offices/adm/hudclips/forms/files/27061-h.pdf>

Likewise, the Low Income Housing Tax Credit Program now requires owners to gather similar data. As of this writing, how this information will be obtained hasn't been determined. We are awaiting information from the applicable state monitoring agencies. For more information on this requirement see: <http://govpulse.us/entries/2010/03/03/2010-4386/low-income-housing-tax-credit-lihtc-tenant-data-collection-responses-to-advance-solicitation-of-comm>

In addition, if your site is financed by MassHousing or receives state dollars or federal dollars administered by the state, you are required to follow specific data collection requirements designed to further fair housing and provide the information to the Department of Housing and Economic Development. For more information see

http://www.mass.gov/?pageID=ehedterminal&L=6&L0=Home&L1=Economic+Analysis&L2=Executive+Office+of+Housing+and+Economic+Development&L3=Department+of+Housing+and+Community+Development&L4=DHCD+Legal+Resources&L5=DHCD+Regulations&sid=Ehed&b=terminalcontent&f=dhcd_legal_760cmr61&csid=Ehed

13. How do I respond if someone asks me what kind of people live at my site?

It isn't unusual to get questions from applicants that directly or indirectly tries to get at the racial/ethnic composition of your site, or who is living in the unit next door to the one the person is hoping to rent. You need to respond in a manner that focuses solely on your support of equal housing opportunity and that all of your residents have satisfied your eligibility criteria and your suitability criteria which were designed to ensure a safe community. Sometimes applicants will persist and ask you bluntly whether people in a specific group live in your development, or if people "like them" live here or if there are "any children" living in the development. To be safe from a fair housing violation, the only way you can respond is to say something like, "I'm sorry, but I'm uncomfortable answering your question. My answer could be construed as a violation of Fair Housing Laws, and I would never want to steer you or anyone else away from the site."

Remember, your marketing efforts and discussions with applicants need to focus on the eligibility and suitability criteria, as well as the site's and unit's amenities. Your responses and marketing focus can't be focused on irrelevant factors or be in any way construed as "discouraging" an applicant from applying.

14. How do I respond as to whether it is safe to live at my site?

This isn't a fair housing question as much as it is a marketing question and often comes up particularly for sites that located in cities. If your site is located in a city you will need to craft your answer to this question in a manner that addresses city living. When answering questions about safety at a site, the specifics will vary. The important thing to focus on is your screening procedures, as well as the systems (i.e. security) you have in place to create a safe living environment for your residents. In regards to Fair Housing, what you need to be cautious of are questions that associate safety, or lack thereof, with a group of people from a

particular race or ethnicity. You can't make such correlations or respond in a manner to questions that suggest there is a correlation.

B. QUESTIONS REGARDING MARKETING

1. Does My Site Have To Follow Any Specific Plan When Marketing?

Many companies require that sites have an affirmative fair housing marketing plan regardless of any legal requirement because it is a good business practice. All sites that are financed with Federal or State dollars are required to market in an affirmative manner and virtually all such sites are also required by law to have an Affirmative Fair Housing Marketing Plan (AFHMP).

If your site is financed by HUD, a HUD-approved AFHMP must be in effect for each multifamily property built or substantially rehabbed since July of 1972. The purpose of the plan is to promote equal housing choice for all prospective tenants regardless of race, color, religion, sex, national origin, familial status and disability. The plan outlines marketing strategies that will be used, including those designed to reach individuals least likely to apply because of the project's design, or the racial/ethnic make-up of its tenant population, or surrounding area least likely apply to housing, including marketing to the LEP population in the community. In addition, it's important to be aware that this plan must also take into consideration the requirements contained in applicable laws (such as 504 of the Rehab Act) that require that marketing efforts be presented in formats that will make the information accessible to persons with different types of disabilities.

The HUD required AFHMP must be reviewed and updated every 5 years, whenever substantial changes take place or the local consolidated plan is updated. See Form HUD-935.2A (5/10/10) which was recently updated,⁵ and Chapter 4, Section 2 of the 4350.3 REV-1, beginning on pg. 4-25. If your site is financed with a state subsidy, please make sure you follow the applicable State requirements.

⁵ <http://www.hud.gov/offices/adm/hudclips/forms/files/935-2a.pdf>

In Massachusetts, all housing with state subsidy or that is on the Subsidized Housing Inventory (SHI) is required to have an Affirmative Fair Housing Marketing Plan (AFHMP) that complies with the Massachusetts Department of Housing and Community Development's requirements. Please see these guidelines, located at <http://www.mass.gov/Ehed/docs/dhcd/hd/fair/afhmp.pdf>

Your site may also have special marketing requirements that need to be followed because of the type of funding that is being used to finance your site. For example, if your site has project based Section 8 you must target your marketing and outreach activities to attract applicants at or below 30% of Area Median Gross Income (AMGI). See Par. 4-12 C., Special Marketing Requirements, beginning on pg. 4-26 of the 4350.3 Rev-1 for more details.

Also please remember that even if your site isn't legally obligated to have an AFHMP or follow specific outreach requirements regarding people with disabilities or people with limited English proficiency, it is a good business practice.

2. What Are Some Effective Strategies to Reach Applicants Who Have Limited English Proficiency?

The specific marketing strategies that you will use to reach potential applicants with limited English proficiency are going to be unique to your site and dependant on which language groups you identify that you want to do outreach to. To identify the prevalence of limited English proficiency by language in your site's area you can go to http://www.mla.org/map_data .

Once you have identified the language groups:

Translate advertisements into the specific language of the population you are trying to reach, making sure you use a translator familiar with applicable regionalisms and housing terminology.

Publish advertisements in publications that are typically read by the language group you are trying to reach.

Identify and contact agencies (including social organizations, religious institutions and service-based organizations) that serve the language group you are trying to reach.

3. What Are Effective Ways to Reach Applicants Who As A Result of Their Disability May Not Be Reached Through Traditional Marketing Strategies?

When most people think of marketing the site they think solely of placing ads in newspapers. Although this may be an effective strategy for reaching some potential applicants, a written advertisement isn't accessible to many individuals with visual, cognitive, or language-based learning impairments. Transferring the information to a sound medium that didn't depend on a person's ability to see or read to get the message, such as advertising on radio and/or television may be effective. However, these means of communication are often costly. An effective and low cost method of getting information to people with different types of disabilities is to provide information to advocacy organizations which work with and serve people with disabilities. This approach is most effective if you have a working relationship with such organizations. Many such organizations have individuals who are "housing advocates" and who would relish the opportunity to work with your site.

4. Do I Need To Follow Certain Requirements When Advertising?

Yes. The purpose of advertising is to attract eligible applicants and make sure that there is a sufficient pool of applicants to fill vacant units. It is crucial that you advertise the availability of housing opportunities to all people, regardless of protected status, and try to attract people who are least likely to apply to your site. If your site is required to follow an Affirmative Fair Housing Marketing Plan AFHMP, how you market must be reflected in that plan, and you must follow the plan. Your plan must utilize strategies that aren't on there face discriminatory. You must also remember that the selective use of advertising media or content can lead to discriminatory results. For example, the use of English language media

alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have a discriminatory impact. For more information see the Fair Housing Act's regulations regarding advertising at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=24:1.2.1.1.1&idno=24#24:1.2.1.1.1.2.97.5> and HUD's guidance on advertising: <http://www.hud.gov/offices/fheo/disabilities/sect804achtenberg.pdf>

Also, your advertisements:

MUST contain the fair housing slogan, logo, or statement.⁶ Which you use will depend on what type of advertisement you utilize and the size of the advertisement.

The Equal Housing Opportunity statement is:

"We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, disability, familial status, or national origin."

The Equal Housing Opportunity slogan is:

"Equal Housing Opportunity."

The Equal Housing Opportunity logo is:

⁶ Regardless of whether you are required to follow an AFHMP, HUD's Fair Housing Act Advertising Guidance, which was originally contained in 24 CFR Part 10,⁶ states that all advertising of residential real estate for sale, rent, or financing *should* contain an equal opportunity slogan, logo, or statement as a means of educating the home-seeking public that the property is available to all persons regardless of race, color, religion, sex, disability, familial status, or national origin. However, use of the logo creates a presumption that you're trying to comply with the Fair Housing Act. Also, if your site is covered by the 4350.3 Rev-1, it is **required** to use the logo in accordance with Par. D. 3. 4-12, pg. 4-28 of the Handbook. In addition, many sites are required to use the statement, slogan or logo, because of requirements contained in their financing agreements.



The equal opportunity logos are maintained by HUD and may be downloaded from its website at: <http://www.hud.gov/library/bookshelf11/hudgraphics/fheologo.cfm>

When the advertising is grouped with other ads, such as in a newspaper, the logo may be eliminated in individual ads if they are all grouped under a caption which contains an equal opportunity statement. Also, in space advertising which is less than 4 column inches (one column 4 inches long or two columns 2 inches long) of a page in size, the equal housing slogan may be used.

If the advertising includes other logos, an equal opportunity logo should be displayed in a size equal to the largest of any other logos used. The logo includes the house and the slogan. The house symbol is not used alone.

If the advertising does not contain other logos, an equal opportunity logo may be used but is not required to be used. If a logo is not used, an equal opportunity slogan must be used in bold, easily readable type. The general rule is that 3-5% of the advertisement may be devoted to a fair housing statement.

The size of the logo depends on the size of the ad. HUD's guidance suggested the following proportions:

Size of advertisement	Size of logotype in inches
1/2 page or larger	2x2
1/8 page up to 1/2 page	1x1
4 column inches to 1/8 page	1/2 x 1/2
Less than 4 column inches	Do not use

Must be facially neutral and should describe the property and not the tenant. For specific examples, see HUD's Guidance <http://www.hud.gov/offices/fheo/disabilities/sect804achtenberg.pdf>. Ads may describe some the units' features and amenities but says nothing about prospective tenants. They can't state a preference or prohibition on the basis of any protected status unless it is a legal criterion for eligibility.

For example, if you were advertising a HUD site designated for the elderly, it would be legal for you to state in an advertisement that the head, co-head or spouse must be 62 years of age or older, because this is a requirement for eligibility. You couldn't however state, no children allowed, because HUD subsidized housing can't exclude otherwise eligible families with children.

For example, phrases such as centrally located, or desirable neighborhood are not illegal. Likewise, descriptions of the property (great view, walk-in closets, no elevators), services or facilities (jogging trails), or neighborhoods (close to bus-stop) are not considered discriminatory advertising. Advertisements describing the conduct required of residents ("non-smoking") are not considered discriminatory advertising.

For example, using words describing the housing, the current or potential residents, or the neighbors or neighborhood in racial or ethnic terms (*i.e.*, white family neighborhood, no Irish) are not permitted.

MUST contain the wheelchair symbol, which denotes physical accessibility, if your site has accessible units. This Symbol looks like this:



MUST contain the TTY/Relay number if you publish the site's telephone number. The Relay number in every state is 711.

MUST reflect the community’s diversity **and** affirmative fair housing marketing goals when human models are used⁷. For example, if your site isn’t racially diverse, and the only people who live at your site are white you can’t depict only people who are white. If you do this you are sending a message that only people who are white are welcome to live at your site. Instead, you want to send a message that all races are welcome to live at your site, not just those who are white. Similar care must be exercised in advertising regarding members of only one sex, or of adults only.

5. Do I Need To Follow Certain Requirements When Marketing My Accessible Units?

Sites that are funded with federal dollars (such as project based Section 8, PRACs and PACs, 236, BMIR, CDBG, HOME....) are required to assure that information regarding the availability of accessible units reaches eligible individuals with disabilities. The regulations do not specify how this should be done. (See 24 CFR 8.27, and 4350.3 REV-1, page 2-25, par. 2-25). Likewise, if you are financed by a state agency or receive state dollars, you have an analogous obligation.

In Massachusetts you are required to use the Housing Registry (MassAccess) to advertise accessible units. You may not rent a wheelchair accessible unit to an individual who doesn’t need the accessible features unless you have advertised the unit with MassAccess for at least fifteen (15) days. See M.G.L. c. 151B, Section 4, 7A. (3). You can reach MassAccess at <http://www.massaccesshousingregistry.org/>

C. QUESTIONS REGARDING TENANT SELECTION

1. What Is A Tenant Selection Plan?

A Tenant Selection Plan (TSP) is the procedure a site uses for processing and selecting applicants. The plan helps to ensure that tenants are selected for occupancy in accordance with all of the requirements contained in the site’s regulatory agreements, applicable laws and established management policies.

⁷ HUD’s Fair Housing Act guidelines use the word should.

2. Am I Required To Have A Tenant Selection Plan (TSP)?

If your site receives federal or state subsidy dollars or was financed by a federal or state agency you are required to have a TSP.

If your site receives money from HUD it **must** have a Tenant Selection Plan (TSP) that includes a description of the eligibility requirements and income limits for admission. See Par. 4-4, beginning on pg. 4-3.

If your site is financed by MassHousing you must use MassHousing's TSP and adapt it to your site. Please see:

https://www.masshousing.com/portal/server.pt/gateway/PTARGS_0_2_1340_0_0_18/TenantSelectionPlan.doc

MassHousing updated its TSP and sites are required to execute the new plan by September 30, 2010 and obtain approval. If you modify the Plan in any way, you are required to send a letter detailing the exact change that you made, the page on which it can be found, and why you modified it. You may e-mail the plan and the cover letter to your Asset Manager but must also sign a printed copy and mail it to the Asset Manager for review and approval. Upon receipt of the signed Plan for your property, the Asset Manager will review, approve or deny your revised plan within 60 days of receipt. For more details see MassHousing's notice on how to complete the 2009 TSP:

https://www.masshousing.com/portal/server.pt/gateway/PTARGS_0_2_4616_0_0_18/memo_tsp_2009.pdf

3. What Must Be Included In My Tenant Selection Plan If I Receive Money from HUD?

Although HUD doesn't have to approve the TSP (unless the owner wants to have a local or residency preference), the 4350.3 Rev-1 specifies a number of procedures and policies that must and should be included. These are summarized, in Figure 4-2, beginning on pg. 4-4 of the 4350.3.

Figure 4-2: Written Tenant Selection Plan - Topics

A. Required Topics

Project eligibility requirements:

Project-specific requirements (see Chapter 3, Section 2);

Citizenship requirements (see Chapter 3, Section 1); and

Social security number requirements (see Chapter 3, Section 1).

Income limits (including economic mix requirements for Section 8 properties) (see Chapter 3, Section 1).

Procedures for accepting applications and selecting from the waiting list:

Procedures for accepting applications and pre-applications (see Chapter 4, Section 3);

Procedures for applying preferences (including income-targeting in Section 8 properties) (see Chapter 4, Sections 1 and 4);

Applicant screening criteria (see Chapter 4, Sections 1 and 4);

Required drug-related or criminal activity criteria;

Other allowable screening criteria; and

Procedures for rejecting ineligible applicants (see Chapter 4, Section 1).

Occupancy standards (see Chapter 3, Section 2).

Unit transfer policies, including selection of in-place residents versus applicants from the waiting list when vacancies occur (see Chapter 7, Section 3).

Policies to comply with Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act and other relevant civil rights laws and statutes (see Chapter 2, Section 3).

Policy for opening and closing the waiting list for the property (see Chapter 4, Section 3).

Eligibility of students (see Chapter 3, Sections 1 and 3)

B. Recommended Topics

Applicant notification and opportunity to supplement information already provided (see Chapter 4, Sections 1 and 4).

Procedures for identifying applicant needs for the features of accessible units or reasonable accommodations (see Chapter 2, Section 3).

Updating the waiting list (see Chapter 4, Section 3).

Policy for notifying applicants and potential applicants of changes in the tenant selection plan (see Chapter 4, Section 1).

Procedures for assigning units with originally constructed design features for persons with physical disabilities (see Chapter 2, Section 3).

Charges for facilities and services (see Chapter 6, Section 3).

Security deposit requirements (see Chapter 6, Section 2).

Unit inspections (see Chapter 6, Section 4).

Annual recertification requirements (see Chapter 7, Section 1).

Interim recertification reporting policies (see Chapter 7, Section 2).

11. Implementation of house rule changes (see Chapter 6, Section 1).

Many companies require that a site's tenant selection plan addresses all of the required **and** recommended topics above.

If your site is also financed by MassHousing you must use MassHousing's TSP and adapt it to your site. Please see:

https://www.masshousing.com/portal/server.pt/gateway/PTARGS_0_2_1340_0_0_18/TenantSelectionPlan.doc

4. How Do Fair Housing Laws Affect Tenant Selection?

Fair housing laws affect virtually every aspect of tenant selection. Everyone is aware that the laws state that you can't discriminate in tenant selection on the basis of protected status, but what this means in terms of tenant selection is important to specify:

Eligibility Criteria

Preferences

Applicants with preferences receive an opportunity for an available unit earlier than those who do not have a preference. Preferences affect the order of applicants on a site's waiting list. They don't affect whether an applicant is eligible for the housing. They also don't affect the site's ability to screen applicants on the waiting list. Sites may have specific preferences they are required to use as a result of a funding source or programmatic requirement that stems from a statute or a regulation. For example, if your site is a HUD 221(d)(3), 221(d)(3) BMIR or a 221(d)(4) property, you must give preference to applicants who have been displaced by government action or a presidentially declared disaster. Please see Par. 4-6 of the 4350.3 Rev-1, beginning on pg. 4-10 for a discussion of preferences in HUD programs, and which preferences take

precedence over others. The figure below from the Handbook summarizes applicable preferences for each HUD program.

Figure 4-3: Summary of Preference Requirements by Property Type

Program	Statutory Preference s - Displaceme nt	HUD Regulator y Preferenc es	Owner- Adopted Preferences
Section 221(d)(3)	✓		
Section 221(d)(3) BMIR	✓		
Section 221(d)(4)	✓		
Section 236		✓	
Section 8			
New Construction			✓
Substantial			✓
Rehabilitation			
State Housing			✓
Agency			
New Construction			✓
or Sub Rehab			
Rural Housing			✓
515/8			
Property			✓
Disposition			
Set-Aside			
Section 202/8			✓
Loan Management			✓
Set-Aside (LMSA)			

If you are required by state or local law to use a preference it must be consistent with HUD and applicable civil rights requirements. You must also receive HUD approval in order to apply locally legislated requirements by submitting a written request to the HUD Field Office. For example, if your site is also financed by MassHousing, you must apply preferences required under Section 7 of the MassHousing enabling statute (M.G.L. c. 23A App., Section 7) in determining the placement of an applicant on the waiting list. Please see Section E of MassHousing's Tenant Selection Plan, beginning on pg. 19 for more details.

Your site may also establish other preferences for assisted properties as long as they are subordinate to any program-specific preferences and comply with applicable fair housing and civil rights statutes. Some owner-adopted preferences require prior HUD approval (as noted below) and some do not. The HUD 4350.3 REV-1 provides important information on the types of preferences that may be implemented by owners to serve unique groups of needy applicants, and the parameters of what must be followed if you do implement these preferences as to not violate fair housing laws. For example:

Residency Preferences: A residency preference provides applicants who live in a specific geographic area at the time of application a priority over nonresidents. In accordance with HUD guidance, you must never adopt a residency requirement (meaning the owner will not lease to any applicant who does not live in the defined jurisdiction or municipality) and it can't be used for the purpose or effect of delaying or otherwise denying admission to a project or unit based on protected status. Owner must secure HUD approval for residency preferences prior to use if it is a HUD subsidized site. HUD will only do so if certain requirements are met. For Section 8 properties, an owner's residency preference must be approved by HUD through a modification to the Affirmative Fair Housing Marketing Plan. Please see the 4350.3 Rev-1, Par. 4-6 C.1 beginning on pg. 4-12 for a complete discussion.

Also, if your site is financed by MassHousing or receives State money you must follow DHCD's requirements regarding establishing local preferences including demonstrating in the Affirmative Fair Housing Marketing Plan the need for the

local preference and that the proposed local preference won't have a disparate impact on protected classes. In no event can a local preference exceed 70% of the affordable units. See: <http://www.mass.gov/Ehed/docs/dhcd/hd/fair/afhmp.pdf>, beginning on pg. 6.

If your site is financed by MassHousing, such a preference may require approval by DHCD and the Municipality in addition to approval by MassHousing's Compliance and Diversity Division. For more details see MassHousing's Required Tenant Selection Plan at https://www.masshousing.com/portal/server.pt/gateway/PTARGS_0_2_1340_0_0_18/TenantSelectionPlan.doc on pg. 23. Also, in accordance with the DHCD guidelines and MassHousing's Tenant Selection Plan (pg. 16), if the Development has adopted a Local (Resident) Preference, applicants may not be admitted or added to a waiting list for the duration of the Preference EXCEPT through the use of a lottery process or as otherwise permitted in writing by MassHousing. The purpose of this requirement is to prevent a disparate impact or discriminatory effect on non-local residents of protected classes.

Other funding sources and localities may have a residency preference. For example, the Department of Neighborhood Development in Boston has a policy. For more information, see: http://www.cityofboston.gov/dnd/pdfs/D_ResidentPreferencePolicyRev8-11-03.pdf Likewise, the Boston Redevelopment Authority has a local preference. See: <http://www.bostonredevelopmentauthority.org/AffordHousing/AHPrefs.asp>

Working families: If you are subsidized by HUD, you may adopt a preference for families in which the head of household or spouse is employed. However, if your site adopts such a preference you can't discriminate against someone unable to work. The Handbook specifically prohibits denying the preference to households in which the head or spouse is 62 or older, or to a person with disabilities.

Disability: If you are subsidized by HUD you may adopt a preference for families that include a person with a disability. You can't create preferences for persons with a specific type of disability unless allowed in

the controlling documents for the property. (See Chapter 3, Section 2.) You can't apply a preference for persons without disabilities. In addition, if your site is financed by MassHousing, your site will have a 3% set-aside for clients of the Department of Mental Health/Department of Developmental Disabilities. A set-aside is different from a preference, in that it is a reservation of units for a specific population. For guidance on MassHousing's DMH/DDS Set-Aside Program, please see: https://www.masshousing.com/portal/server.pt/gateway/PTARGS_0_2_1348_0_0_18/DMH-DMR_Questions.pdf

Elderly: In accordance with Title VI, Subtitle D of the Housing and Community Development Act of 1992, owners of "covered Section 8 housing projects"⁸ designed primarily for occupancy by elderly families are permitted (not required) to adopt a selection preference for elderly families. If the owner adopts the preference, it must be implemented in accordance with the rules described in paragraph 3-18 of the 4350.3 Rev-1, beginning on pg. 3-49.⁹

Occupancy Standards: Every site that is subsidized with federal or state dollars or financed by MassHousing is required to determine the minimum and maximum number of people who can live in the units they rent. These are called occupancy standards and they are specific to each site. The purpose of occupancy standards is to make sure a site is making the best use of the space in a unit and not have it be over-crowded. If a site is subsidized with HUD dollars, or financed by MassHousing, occupancy standards are required to be part of the site's Tenant Selection Plan. This is the document that summarizes the criteria an applicant must meet to be eligible and suitable for the housing.

⁸ These are Section 8 New Construction, Section 8 Substantial Rehab, State Housing Agec programs for Section 8 New Construction and Substantial Rehab, Rural Housing 515/8 and Section 8 Property Disposition Set-Aside that involve substantial rehab.

⁹ A similar law applies to MA state-aided public housing, Mass. Gen. Law Ann. Ch 121B Sec. 39. It is commonly called the mixed population legislation and seeks to achieve a mixed population of elderly households in 86.5% of the units and handicapped households in 13.5% of the units. See: <http://www.mass.gov/Ehed/docs/dhcd/ph/publichousingapplications/definitions.rtf> and <http://www.cga.ct.gov/2000/rpt/olr/htm/2000-R-1001.htm>

Occupancy Standards and Housing Discrimination

Nothing in the Federal Fair Housing Law or Massachusetts law prohibits owners and managers from adopting reasonable occupancy standards. Neither law limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of people allowed to occupy a dwelling. Occupancy standards must be applied uniformly to all households and can't be based on numbers of adults and children, but rather on number of occupants. Remember, age and familial status are protected classes. In addition, it isn't up to you to decide who shares a room with whom. The focus must be on factors that are relevant to who is eligible and suitable to live in a unit, rather than your social values. If a family, based on the number of members, would qualify for more than one unit size, you must allow the family to choose which unit size they prefer.

A 1991 memo written by HUD's then General Counsel, commonly referred to as the Keating Memo, contains widely accepted guidance on acceptable occupancy standards. In 1998, HUD adopted this memo as its official policy on determining whether occupancy standards are reasonable or discriminatory. This memo discusses the use of a two person per bedroom occupancy standard and factors that affect when this standard, and more or less restrictive standards, might be considered reasonable. This policy is explicitly reflected in the 4350.3 REV-1, the Handbook that HUD subsidized sites must follow. Some people believe that an occupancy standard based on the number of people per bedroom rather than square footage may be discriminatory if it has a greater impact on families with children, and families from specific national origin, and can't be justified by business necessity (i.e. impact on the building systems). See Par. 3-23, pg. 3-63.

For example, based on the census, certain ethnic groups have larger households. Assuming families from Ethnic Group A have more than four people relative to the larger population and the affordable housing stock in the geographic area is comprised almost solely of units with a maximum of two bedrooms. A two person per bedroom occupancy standard would therefore have a greater impact on families from Ethnic Group A. The questions that would then need to be asked is why an owner chose a two person per-bedroom occupancy

standard. Assuming the owner had a legitimate reason for the occupancy standard the question that would then need to be answered is if a different occupancy standard, such as one based on square footage of habitable space, would have a less discriminatory impact and satisfied this business need.

In Massachusetts, the State Sanitary Code places the following restrictions on the number of people who can occupy housing, and if your site is financed by MassHousing or receives state dollars, you must base your site's occupancy standards on this Code:

- Every dwelling unit must contain at least 150 square feet of floor space for the first person, and at least 100 square feet of floor space for each additional person. The floor space must be calculated on the basis of total habitable rooms. Habitable rooms include bedrooms, dining rooms, living rooms, dens, or bonus rooms. *Non-habitable* rooms include rooms with toilets, bathtubs, showers, laundries, pantries, hallways. Closets and storage space are not considered habitable rooms.
- Every room occupied for sleeping purposes for one occupant shall contain at least 70 square feet of floor space. Every room occupied for sleeping purposes for more than one occupant shall contain at least 50 square feet of floor space for each occupant.
- In a rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least 80 square feet of floor space. Every room occupied for sleeping purposes by more than one occupant shall contain at least 60 square feet for each occupant.

If you have any questions about your site's applicable Occupancy Standards please review the site's Tenant Selection Plan and speak with the Regional Manager or a representative of the Compliance Department.

Who Counts as Family Members When Determining Occupancy Standards?

In order to determine the size of unit that would be appropriate for a particular family, you need to determine the number of family members for the purpose of determining the size of the unit. If your site is subsidized and covered by the 4350.3 REV-1, Par. 3-23 E. 4., beginning on pg. 3-67, provides a great deal of detail as to who is and isn't to be included when determining the appropriate size unit for a household. For example:

The owner must count all full-time members of the family;

The owner must also count all anticipated children;

Anticipated children include the following:

- (1) Children expected to be born to a pregnant woman;
- (2) Children in the process of being adopted by an adult family member;
- (3) Children whose custody is being obtained by an adult family member;
- (4) Foster children who will reside in the unit;
- (5) Children who are temporarily in a foster home who will return to the family; and
- (6) Children in joint custody arrangements who are present in the household 50% or more of the time.

You may count children who are away at school and who live at home during recesses but should not count children who are away at school who have established residency at another address or location as evidenced by a lease agreement;

You must count live-in aides;

You must count foster adults living in the unit; and

You may establish reasonable standards for counting family members that are temporarily in a correctional facility.

You must not count non-family members, such as adult children on active military duty, permanently institutionalized family members, or visitors.

Eligibility Criteria

Eligibility is a determination that an applicant family meets all of the

criteria for the type of subsidy in the property. Whether an applicant for subsidized housing is eligible for housing is dependant on program and project requirements. Program eligibility describes the criteria by which the owner must determine whether a family is eligible to receive assistance in accordance with HUD requirements. Project eligibility describes the criteria by which the owner must determine whether a family is eligible to reside in this property based on the population it is designed to serve in accordance with its regulatory agreement, unit sizes and occupancy standards. When administering these eligibility criteria you must follow the same procedures without regard to protected status.

A. Eligibility Criteria Pursuant to Program Rules

All sites that receive federal or state funding are required by statute, regulations and/or a directive system to apply specific eligibility criteria. For example, all subsidized sites are subject to income limits, although what the income limit is will depend on the subsidy program's rules. Many programs also have other eligibility requirements, including citizenship, sole residency, a consent to the release of information and student status. These are discussed in more detail below.

Maximum Income – At admission, household gross annual income must not exceed current income limits for the applicable housing program to which an application is made. Different programs have different income limits that are based on the area median gross income (AMGI) for the applicable household size. Typically, programmatic income limits are described as Below Market Interest Rate (95% of AMGI), low-income (80%), very-low income (50%), or extremely low-income (30% of AMGI). The following chart, which comes from the 4350.3 REV-1, describes the applicable income limits for HUD programs.

Figure 3-3: Income Limits by Program, pg. 3-8

Subsidy	Type of Income Limit
Section 8 (pre-1981)	Low, very low, and extremely low-income limit
Section 8 (post-1981)	Very low and extremely low-income limit
Section 236	Low-income limit
Rent Supplement	Low-income limit
Rental Assistance Payment (RAP)	Low-income limit
Section 202 without assistance	Low-income limit See paragraph 3-6 D 3 for exceptions
Section 202 with Section 8 Assistance	Pre-1981 Low, very low, and extremely low-income limit Post-1981 Very low and extremely low-income limit
Section 202 with Rent Supplement	Low-income limit
Section 202 PACs	Low-income limit
Section 202/811 PRACs, <u>except</u> those funded in FY1995	Very low-income limit
Section 202/811 PRACs funded in FY 1995	Low-income limit
Section 221(d)(3) BMIR	BMIR income limit

Citizenship status – In accordance with specific legal requirements, citizenship and eligible immigration status must be documented for individuals to be considered eligible for specific HUD programs. The restriction on assistance to non-citizens applies to all properties covered by the 4350.3 REV-1 except the following:

1. Section 221(d)(3) BMIR properties;
2. Section 202 PAC;
3. Section 202 PRAC; and
4. Section 811 PRAC.
5. Section 202 projects with units not receiving assistance under the Rent Supplement or Section 8 programs.

Disclosure and Verification of Complete and Accurate Social Security Numbers – If your site is covered by the 4350.3 REV-1, verification must be provided for all family members except individuals who do not contend eligible immigration status; and/or tenants who are age 62 or older as of January 31, 2010 and whose initial eligibility began prior to January 31, 2010. In addition, regardless of subsidy, all adult household members must provide relevant consent forms permitting management to verify eligibility and suitability for housing and some type of identification that enables management to conduct a background check, such as a social security number, or Individual Taxpayer Identification Number (ITIN). Each application must be accompanied by a government issued photo ID for each applicant (for example, driver's license, majority card, military ID, etc). All applicants in the United States on a Visa must provide a copy of the Certificate of Eligibility, which is completed upon arrival in the United States.

Authorization for Release of Information - Form HUD-9887, *Notice and Consent for the Release of Information to HUD and to a PHA* and Form HUD-9887A, *Applicant's/Tenant's Consent to the Release of Information Verification by Owners of information Supplied by Individuals who Apply for Housing Assistance*, must be signed by the head, co-head, spouse, and all household members aged 18 or older prior to receiving assistance and annually thereafter. See 4350.3 REV-1, par. 3-11, beginning page 3-20. If your site is also financed with a non-HUD subsidy, you will not be able to use these forms to obtain information; you must use an additional release form. If your site has state subsidy and is financed by MassHousing, please see the Consent for Release of Information as presented in Attachment 4 of the MassHousing Tenant Selection Plan.

Sole Residence Requirement - If your site is covered by the 4350.3 REV-1, the unit for which the family is applying must be the family's ONLY residence. See 4350.3 REV-1, par. 3-10, page 3-19. Also, tenants must not receive dual subsidy (rental assistance/subsidy for two units at the same time). If any member of the applicant household resides in HUD-assisted housing or is receiving voucher subsidy for another unit at the time of anticipated move-in to this property, verification must be received in advance by the current landlord/voucher agent to

determine a mutually agreed upon move-out date from current housing and move-in date into this property.

Student Status Requirement: Many programs have a rule that limits eligibility based on student status. For example, there are two different student rules for the programs covered by the 4350.3 REV-1: One for the project-based Section 8 program and one for the Rent Supplement, RAP, Section 221(d)(3) BMIR, Section 236, Section 202 PAC, Section 202 or Section 811 PRAC programs. (See 4350.3 REV-1, par. 3-13, beginning on page 3-37). Other housing programs, such as the Tax Credit program also have student status eligibility requirements. (See 8823 Guide, Chapter 17).

B. Eligibility Criteria Pursuant to Project Eligibility

Three factors affect the match between an applicant and the applicant's eligibility in any other project:

The extent to which all or some of the units in a project are designated for specific family types, such as those who are elderly or disabled. For example, in regards to the HUD sites covered by the 4350.3 REV-1, definitions to establish eligibility or obtain program benefits as an elderly family or person with disabilities vary by program and in the Section 202/8, Section 202 PAC and Section 202 PRAC and Section 811 PRAC programs eligibility can vary by project. For more detail see **par.3-18 Eligibility Requirements for Admission to Elderly Projects, By Program Type Covered by Title VI**, beginning on pg. 3-49. Also, some projects receive assistance from more than one program. Figure 3-5, beginning on pg. 3-43, indicates which definitions apply by type of program. Figure 3-6, beginning on pg. 3-45, presents the relevant definitions of elderly and disabled families.

Verification of a disability to determine whether a family or person meets the definition of disability used to determine eligibility for occupancy at the Development or for preferences, or to identify applicant needs for features of accessible units or reasonable accommodations must be done in a manner that doesn't violate civil rights laws. You may not specifically ask for or verify the

nature and extent of the disability. There are ways to verify disability status without obtaining detailed information or information that must not be collected.

Verification of disability may be obtained through a third-party verification form sent to an appropriate source of information, including but not limited to the individual's physician, care worker of the elderly, social worker, psychiatrist, or the Veterans Administration. If a third-party form is used, it must be signed by the Applicant authorizing the release of such information to the Agent, provide the definitions of disability used to determine eligibility and rent, and should request that the source completing the form identify whether the Applicant meets the definition. For examples and further guidance, see Appendix 15 to HUD Handbook 4350.3 REV-1.

In the case of applications for Federally Assisted Housing units, receipt of social security disability payments may be adequate verification of an individual's disability status for housing subsidy programs using the Social Security's definition for a person with disabilities (See HUD Handbook 4350.3 REV-1).

The project-specific occupancy standards established by the owner, the family size, and the unit sizes available in the project; and

Where 100% of the units have a project based subsidy, a family's intention to lease using a housing-choice voucher subsidy. In such instances, it isn't discriminatory to refuse to accept a voucher. Whereas, if your site didn't have a project-based HUD subsidy, refusing to accept a voucher would not be permitted. In the state of Massachusetts, you are legally prohibited from discriminating on the basis of public assistance and if your site has tax-credits you are prohibited from refusing to admit a household because they have a section 8 voucher or certificate (See 8823 Guide, pg. 7-2).

C. Suitability/Screening for Tenancy

Throughout the admission process you are bound not only by program specific technical requirements but also by a broad standard of nondiscrimination.

Screening is a determination that an otherwise eligible household has the ability to pay rent on time and to meet the other requirements of the lease.¹⁰

Some housing programs **require** owners to use specific screening procedures and screen applicants to determine their ability to comply with the lease, while others, such as the tax-credit program, don't have any requirements.

For example, if your site is funded by HUD and covered by the 4350.3 REV-1, you are required to adopt screening procedures to ensure that individuals subject to lifetime registration requirements aren't admitted to your federally assisted housing. This check must be carried out with respect to the State in which the housing is located and with respect to States where the applicant and members of the applicant's household are known to have resided. You may verify the information provided by the applicant by searching the Dru Sjodin National Sex Offender Database (located at <http://www.nsopw.gov>) as recommended and in the manner set forth in HUD Notice H 2009-11. See <http://www.hud.gov/offices/adm/hudclips/notices/hsg/files/09-11hsgn.doc>

Whereas, if you're a market site with just Tax Credits you aren't required to use this database or reject applicants who are lifetime sex-offenders unless required to do so by your regulatory agreement. You may choose to do so, but if you do it must be in your Tenant Selection Plan.

Regardless of what your site's funding source, and what you are required to screen for, once you develop the screening procedures and rejection criteria you must apply both consistently to all applicants.

Sites that are funded by MassHousing are required to use this agency's Tenant Selection Plan which contains specific screening procedures and criteria, beginning on pg. 6.

¹⁰ These criteria are summarized as follow

- (a) to pay rent and other charges under the lease on time;
- (b) to maintain a decent, safe and sanitary unit;
- (c) not to interfere with other people's quiet enjoyment;
- (d) not to engage in any criminal activity on or near the housing premises; and
- (e) to comply with necessary and reasonable rules and requirements.

Also see pg. 6 of MassHousing's TSP for a more detailed version of such criteria.

See

https://www.masshousing.com/portal/server.pt/gateway/PTARGS_0_2_5960_0_0_18/Tenant%20Selection%20Plan.doc

HUD, which requires owners/agents to screen residents for their ability to comply with the lease, provides owners considerable discretion in establishing screening criteria. The HUD Handbook contains both mandatory screening criteria and discretionary screening criteria.

Mandatory Screening Criteria

If your site is covered by the 4350.3 REV-1 you are **required** to screen applicant households to determine:

If any household member is subject to a state lifetime sex offender registration program.

If a household member's abuse or pattern of abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents, although such screening standards must be based on behavior, not use or abuse of alcohol.

If a household member's illegal use or pattern of illegal use of a drug may interfere with the health, safety or right to peaceful enjoyment of the premises by other residents.

If a household member is a current illegal user of a controlled substance.

If a household member has been evicted from Federally-assisted housing for drug-related criminal activity (as such term is defined in Section 3(b) of the United States Housing Act of 1937 {42 U.S.C. 1437a(b)}, within the past three years.

Please see par. 4-7, beginning on pg. 4-14. Remember, you can choose to apply additional or more stringent screening criteria as discussed below. Also remember that if you use the Massachusetts Criminal Offender Record Information (CORI) that you must follow the Criminal History Systems Board's rules that can be found at:

<http://www.mass.gov/?pageID=eopsagencylanding&L=3&L0=Home&L1=Pu>

[blic+Safety+Agencies&L2=Criminal+History+Systems+Board+\(CHSB\)&sid=](#)
[Eeops](#)

Discretionary Screening Criteria

Sites have a lot of flexibility when it comes to screening for suitability. Standard screening criteria in the industry are credit checks, criminal background, and landlord history. Owners and managing agents may establish other criteria if related to ability to comply with the lease provided they're not discriminatory or specifically prohibited by a directive system or a controlling document. In accordance with the 4350.3 REV-1 all screening criteria adopted by the owner must be described in the site's Tenant Selection Plan and consistently applied to all applicants. Please see Par. **4-7 Screening for Suitability**, beginning on pg. 4-14 for more detail.

[HSGH.pdf](http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503c4)

Prohibited Screening Criteria And Inquiries

The 4350.3 REV-1 prohibits owners/agents from screening applicants for suitability on specific factors unrelated to an applicant's ability to comply with the terms of the lease. See Par. **4-8 Prohibited Screening Criteria**, beginning on pg. 4-21. Some of these factors relate to civil rights compliance and are discussed below. For more details see the handbook at

[HSGH.pdf](http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503c4) Please note that MassHousing's Tenant Selection Plan beginning on page 11 contains similar prohibitions.

D. Physical Examinations/Medical Testing.

You can't require physical examinations or medical testing as a condition of admission, including testing for communicable diseases. Likewise, you can't require pregnancy testing to determine unit size. In accordance with Appendix 3 of the 4350.3 REV-1, you may require self-certification of an "unborn child." See

[HSGH.pdf](http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503x3)

Disability Status. An owner/agent can't make an inquiry to determine if an applicant, or any persons associated with the applicant, has a disability or handicap, or to make inquiry as to the nature or severity of an identified disability or handicap, unless necessary to determine eligibility, or for a housing related purpose, such as determining if a person is eligible for a deduction when calculating rent. For example, in accordance with paragraph 4-29, an owner may request supporting documentation in order to verify whether an individual is a qualified individual with a disability when an applicant requests an accessible unit or a reasonable accommodation/modification and must adhere to the guidelines as set forth in 2-31 F. (Refer to Chapter 2 of the 4350.3 REV-1 for more information on fair housing requirements.)

In no way does the requirement that you ignore someone's status as a person with a disability limit your ability to determine if she will be a good tenant. You may continue to use applicant-screening methods designed to determine the likelihood that an applicant will be able to meet the essential requirements of tenancy as expressed in the lease. In addition, although owners/agents may require all applicants to provide evidence of an ability to meet the obligations of tenancy, you may not impose greater burdens on persons with disabilities. Persons with disabilities may meet the requirements of the lease with the assistance of others, including an assistance animal, a live-in aide, or with services provided by someone who does not live in the unit.

Protected Class, etc. The requirement not to discriminate means that an owner/agent must treat each individual applicant on the basis of her merits; you may not make presumptions about someone's tenancy potential based on protected status. An owner/agent can't establish criteria that are based on protected status (i.e. race, color, creed, religion, national or ethnic origin, ancestry, class, sex, sexual orientation, familial status, disability or handicap, veteran status or membership in the armed forces, receipt of public assistance, age, marital status or other basis prohibited by city, state or federal law), or membership in the sponsoring organization of the property, or a segment of the population.

Mitigating/Extenuating Circumstances

Consideration of mitigating/extenuating circumstances in the application process context means that prior to an applicant being denied housing because of his/her negative tenancy related behavior that the person is permitted to present factors that explain why the behavior in question will not likely recur in the future. HUD permits, but doesn't require owners/agents to consider mitigating/extenuating circumstances in evaluating information obtained during the screening process to determine the acceptability of an applicant for tenancy unless the negative tenancy related behavior is a mandatory rejection standard, such as an individual subject to a state lifetime sex offender registration program. However, in accordance with HUD requirements, if the applicant is a person with disabilities, the owner must consider extenuating circumstances where this would be required as a matter of reasonable accommodation. See par. **4-28 Ensuring That Screening Is Performed Consistently**, pg. 4-55.

http://www.hud.gov/offices/adm/hudclips/handbooks/hsggh/4350.3/43503c4_HSGH.pdf What this means is that if someone informs you that their negative tenancy related behavior is a result of their disability you must consider mitigating circumstances as a form of a reasonable accommodation. For more details on this please see the handbook on the Legal Obligations and Rights of Public and Assisted Housing Providers under Federal and State Fair Housing Law for applicants and Tenants with Disabilities. https://www.masshousingrental.com/portal/server.pt/gateway/PTARGS_0_1_2725_10032_0_0_18/RA_Handbook.pdf

In contrast, if your site is financed by MassHousing you must consider mitigating factors for **all** applicants if an applicant makes such information known to the housing provider before being rejected. Applicants who are rejected from MassHousing-financed developments also may request a Rejection Conference to consider such information (as well as other issues) if the applicant had not provided such information before the rejection. An applicant may present facts that overcome or outweigh negative screening information and are sufficient to convince the housing manager that the applicant will comply with the lease and such facts presented rebut the presumption that an applicant shall be unable to meet the requirements of tenancy regardless of disability status. Please see pg 7 of MassHousing's Tenant Selection Plan for details on the factors that should be considered when considering mitigating circumstances.

G. Screening Live-In-Aides/Personal Care Attendant Different agencies have slightly different definitions of a live-in-aide/personal care attendant. Generally, The Multifamily HUD Handbook, 4350.3 Rev-1 defines a live-in-aide as someone who is essential to the care and well being of an applicant or resident, isn't otherwise obligated for the support of the applicant/resident, and who wouldn't otherwise be living with the person who needs the assistance.¹¹ The Massachusetts Department of Housing and Community Development also requires that the person be paid fair value for their work to qualify. Although the terms live-in aide and personal care attendant are often used interchangeably not all personal care attendants are live-in aides. Like a live-in aide, a personal care attendant is necessary for the individual's care or well-being. However it may not be necessary in all cases that the person with the disability need the personal care attendant to live with him/her. Typically a person needs a live-in aide when their situation requires that they have someone near them most of the time.

If your site is subsidized by HUD, you are required to screen live-in-aides for drug abuse and other criminal activity by applying the same criteria established for screening other applicants. This includes checking the sex-offender registry to determine if someone is subject to a lifetime registration requirement. Owner established screening criteria may also be applied to live-in aides, except for the criterion regarding the ability to pay rent on time because live-in aides are not responsible for rental payments. See par. **4-7 Screening for Suitability**, pg. 4-15

http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503qjr_HSGH.pdf You are not required to screen for a personal care attendant who doesn't live with a resident. If you wanted to screen all personal care attendants you would also have to screen other individuals who work for residents on site, such as child-care providers.

If someone requests a live-in-aide you must treat this as a request for a reasonable accommodation. In accordance with the 4350.3 REV-1, you are required to verify the need for a live-in aide. See Par. 3-6 E. **Income Limits and**

¹¹ See Glossary. See 760 CMR 6.03

Family Size, beginning on pg. 3-8.¹² You are required to obtain documentation from a health care provider but you aren't permitted to request medical records. HUD (and monitoring agents in other programs such as tax credits) has focused on making sure there is adequate verification in the files regarding live-in aides because they are concerned that applicants and residents are classifying household members as live-in aides to avoid paying rent and obtain medical expense deductions that they shouldn't. HUD has specified, however, that family members may be live-in aides, provided they satisfy the definition. HUD has suggested paying particular attention to whether the household member would otherwise be living in the unit.¹³

Although live-in aides are counted when determining unit size, they aren't counted when determining household size for the purpose of applicable income limits and their income and assets aren't counted when calculating the household's gross (and adjusted) income. In addition, if your site is covered by the 4350.3 REV-1, some out of pocket/non-reimbursed expenses for services provided by the live-in aide are considered as eligible medical expenses. These include nursing services and personal care assistance, but not housekeeping. (See Chapter 5 and Exhibit 5-3 for more information on medical expenses.)

<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503c5HSGH.pdf>

¹³ There are specific rules regarding an adult child joining the household after initial occupancy for the 202/8 and 202 and 811 PRAC programs that are important to avoid a fair housing complaint. An adult child is eligible to move into a Section 202/8 project after initial occupancy only if they are essential to the care or well-being of the elderly parent(s). They are considered a part of the family and their income must be counted. However, they don't have a right to remain in the unit and should sign a document stipulating their understanding of this. In contrast, an adult child is only eligible to move into a Section 202 PRAC or Section 811 PRAC after initial occupancy if they are performing the functions of a live-in aide, are eligible to be classified as a live-in aide, and shall be treated accordingly. Their income isn't counted. There is an excellent chart that summarizes the differences in these programs. See **Figure 7-2: Comparison of Live-in Aid and Adult Child in 202/8 and 202 PRAC projects** in Chapter 7 of the 4350.3 REV-1, <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503c7HSGH.pdf>

D. QUESTIONS REGARDING REJECTING APPLICANTS

1. Do Fair Housing Requirements Affect The Rejection of Applicants?

Yes. You must apply your rejection standards uniformly and consistently to avoid a claim of discrimination. This means that you may only reject for the reasons contained in your Resident Selection Plan.

2. Does My Rejection Notice have To Include Any Specific Language Regarding Fair Housing Requirements?

Yes. Different funding sources require different information to be in your rejection notice:

The Fair Housing Logo or statement (MassHousing Tenant Selection Plan, HUD 4350.3);

The Right to request a reasonable accommodation to participate in any hearing procedure. (HUD 4350.3, par. **4-9 Rejecting Applicants and Denial of Rental Assistance**, pg. 4-24);

The right to request a reasonable accommodation if the applicant believes that, with such an accommodation, the applicant would be suitable for admission and that the applicant was rejected for a reason arising from the applicant's disability. (MassHousing Tenant Selection Plan); and

The right of individuals with limited English proficiency to request free language assistance in order to participate in any hearing procedure in accordance with a site's Language Assistance Plan, if applicable.

3. Does Fair Housing Affect How A Hearing Is Conducted?

Yes. The hearing process must be accessible to all applicants:

You must hold the hearing in an accessible location;

Provide reasonable accommodations/auxiliary aids for individuals with disabilities if necessary as a result of his/her disability to enable them to have an equal opportunity to participate in the hearing process; and

Provide individuals whose primary language is other than English and as a result have limited English proficiency free language assistance in accordance with a site's Language Assistance Plan, if applicable.

4. Does My Legal Obligation To Provide Reasonable Accommodation Require Me To Do Anything Differently During A Hearing?

As mentioned above, your obligation to provide persons with disabilities equal access to the hearing process requires the following:

a. Physical Access

You must ensure that the hearing be held in an accessible location and if your site isn't accessible you must make other arrangements to conduct the hearing in an accessible location.

b. Auxiliary Aids and Facilitating Adequate Communication

You must also furnish auxiliary aids if it is necessary to facilitate communication with someone who has a disability. An auxiliary aid is something that helps a person give or receive information. Sometimes this means giving information in a different format -- large print, audiotapes, computer disks. Other times a person may need a sign language interpreter or some other method of facilitating verbal communication. In determining what auxiliary aids are necessary, you must give primary consideration to the request of the person with the disability. Documents intended for use during the hearing must be available in fully accessible formats for individuals with vision impairments. To the extent possible, they must also be written simply and clearly to assist applicants with learning and cognitive disabilities. If requested by such an applicant, housing providers must explain written material verbally, possibly more than once, and if necessary, assist or obtain assistance for the applicant in filling out any necessary forms. If a housing provider is concerned about liability should there be later disagreement as to accuracy or truthfulness, a housing provider may ask the resident for permission to tape record the application session. The housing provider should give a copy of the tape to the applicant. The housing provider may also refer the applicant to an agency or individual for assistance. If such assistance is not available, the housing provider may contract with an individual or agency to provide this service to applicants and residents. Such a contract

could be an undue financial and administrative burden in some circumstances. If it were an undue burden it would not relieve a provider from coming up with another solution that did not pose an undue burden. Please see the Reasonable Accommodations Handbook Appendix for a discussion of the term Undue Financial and Administrative Burden. https://www.masshousingrental.com/portal/server.pt/gateway/PTARGS_0_1_2725_10032_0_0_18/RA_Handbook.pdf

A service provider, advocate, or friend must be permitted to assist the applicant during the hearing process if the applicant so chooses. This includes any interviews that may take place.

Remember, Title VI of the Civil Rights Act and HUD's recent implementation of this rule⁷ may require the provision of auxiliary aides in a person's native language if the person has limited English proficiency.

c. Mitigating Circumstances

Another form of reasonable accommodation that is applicable to the hearing process involves the consideration of mitigating circumstances. MassHousing-financed housing providers are required to consider mitigating circumstances for all applicants. Managers of this housing must inform all applicants of your obligation to consider mitigating circumstances and provide reasonable accommodation for applicants with disabilities. This should be explained as simply as possible. Assisted housing not financed by MassHousing must consider mitigating circumstances for individuals with disabilities, if requested, as a means of reasonable accommodation.

E. QUESTIONS REGARDING COMMUNICATING WITH APPLICANTS AND RESIDENTS

1. What Is My Site Required By Law To Do So Staff Can Communicate With People Whose Primary Language Isn't English and Have Limited English Proficiency?

A person with LEP is someone who doesn't speak English as his/her primary language and who has a limited ability to read, write, speak or understand

English. Whether your site is required by law to provide free language assistance to individuals whose primary language isn't English and who have limited English proficiency assistance is dependant on your site's source(s) of funding/financing and the obligations contained in your controlling documents. If your site receives federal dollars, or is otherwise required by a regulatory agreement, it must comply with Title VI of the Civil Rights Act of 1964 and provide access to individuals with limited English Proficiency. Such sites are required to provide free language assistance to individuals with Limited English Proficiency throughout the occupancy cycle (application, tenancy and move-out/eviction), provided it doesn't impose an undue burden on the site. HUD appears to use this term in a similar manner as it does under disability discrimination law, to mean an undue financial and administrative burden.

<http://www.hud.gov/offices/fheo/promotingfh/LEP-PublicMeeting.pdf>

Many companies, regardless of legal obligation, recognize the importance of communicating effectively with all applicants and residents and believe that this is a business necessity.

Applicable sites' Language Assistance Plans address the factors that affect each site's obligation to accommodate persons with Limited English Proficiency including:

- 1) The number/proportion of persons with LEP who could apply to or live in your housing development;
- 2) How often persons with LEP have contact with your housing program (application through termination of tenancy). The more contact the greater the obligation;
- 3) The nature and importance of the program, activity, or service provided by the program to people's lives. The more important the activity the greater your obligation; and
- 4) The resources and costs available.

In accordance with HUD's guidance, Language Assistance Plans (LAPs) do the following:

- 1) Identify LEP population(s) to be served by each site;
- 2) List the language assistance measures to be provided:
 - Types of language services available;
 - How staff can obtain those services;
 - How to respond to LEP callers;
 - How to respond to written communication from LEP persons;
 - How to respond to LEP persons who have in person contact with site staff;
 - How to ensure competency of interpreters and translation services.
- 3) Identify how training of staff about LEP policies and procedures shall occur;
- 4) Discuss providing notice to LEP persons about availability of free language services, such as: posting signs; inclusion in outreach documents; working with grassroots and faith based community organizations; inclusion of common languages in a telephone voice mail; notices in local newspapers and non English-speaking radio and television.
- 5) State how monitoring and updating of the LAP shall occur on an ongoing basis.

A sample Language Assistance Plan is located on MassHousing's website at https://www.masshousing.com/portal/server.pt/gateway/PTARGS_0_2_2584_0_0_18/Sample_AccessPlan.doc

2. What Should Our Site Do To Make Sure We Can Respond If An Applicant/Resident Doesn't Speak English?

Sites that receive federal dollars are required by Federal law to make sure they can respond to both telephone and in person communication if the applicant/resident doesn't speak English or speaks limited English. Likewise, many sites that are financed with state dollars are also required to do so. How

a site satisfies its obligation is up to the site. Remember, some companies take the position that regardless of a site's funding, they will provide free language assistance to applicants/residents with limited English proficiency because it is necessary in order to effectively operate their sites, provided it doesn't impose an undue burden on the site.

The first step in communicating with someone whose primary language isn't English is identifying the person's primary language. If you are in person, you could utilize "I speak cards" which are located on MassHousing's website at https://www.masshousing.com/portal/server.pt/gateway/PTARGS_0_2_2578_0_0_18/Language_Flashcard.pdf These cards enable someone to point to their language for identification purposes. If the person is calling you on the phone, it's a little trickier because the person can't point to his/her language on a piece of paper. If you recognize the language and a bilingual staff person who is available can communicate with the person, the problem is solved. If you don't recognize the language, you will need assistance in identifying it and communicating with the person. Assuming you don't have a linguist on staff (which is highly unlikely) you could utilize a Telephone Interpreter Service Line, which can provide immediate interpreter services in over 140 different languages, such as the Language Line, which can be accessed at <http://languageline.com/>. It is extremely helpful to have a contract with a Telephone Interpreter Service Line because it is highly unlikely that staff will be able to meet the language needs of all applicants.

Also, if your site contracts with a security company or uses an answering service after hours, make sure they know about the Interpreter Service Line and how to utilize it, or have an effective alternative method of communicating with residents with limited English proficiency that doesn't delay access.

You might think that an applicant/resident with limited English proficiency will bring someone with them to help communicate during an interview, recertification or if there is an emergency situation. Although this may be your experience and may be effective in some situations, if your site receives federal dollars (or is otherwise required to comply with Title VI because of your site's controlling documents) you are required to provide a method of effective communication and aren't supposed to rely on family members to interpret for you. In addition,

reliance on family members is often not as effective as relying on a professional interpreter. For example, it is fairly typical for a minor child to provide interpreter services for the adult household members who have limited English proficiency. Given the complexity of filling out applications for subsidized housing (i.e. answering questions regarding sources of income and assets and eligibility requirements) and answering questions during the interview process, it is highly likely that the child will not fully understand all of the questions being asked or be able to accurately relay the questions being asked. The result is inaccurate information necessary to determine the eligibility of a household for housing and potential non-compliance.

In addition, there are times when it is also potentially dangerous to rely on a family member to interpret, such as when domestic violence is suspected. Also, many emergency situations require a quick response and if a person needs to go find a family member or other resident to be able to communicate something is wrong; precious time has gone by.

Please review your company's Language Assistance Plan if applicable.

3. What Do I Do If I Can't Understand What A Tenant Asks Me To Do Because I Don't Speak His/Her Language?

If you can't understand a tenant because of a language barrier you need to talk to your supervisor and find out what has been put into place to help make sure that staff can communicate orally and in writing with people with limited English proficiency.

There are a number of sources that a site can use to communicate with people with Limited English Proficiency (LEP). These include:

Using bilingual staff to interpret and provide translation services; and

Using professional interpreters and translators for various language groups. You can locate interpreters and translators through the New England Translators Association, at <http://www.netaweb.org/cms2/find-a-translator>;

Using **outside resources** that include community volunteers who are willing to provide oral and written language assistance; and

Using a Telephone Interpreter Service Line which can provide immediate interpreter services in over 140 different languages

Note: You need to know your site's policy regarding using informal interpreters, such as other residents and family members. HUD guidance makes it clear that informal interpreters may not be appropriate, depending on the circumstances and subject matter. Simply put, not all informal interpreters are competent to provide quality and accurate interpretations. As a result, such language assistance may not result in a person with LEP obtaining meaningful access to our housing. However, in emergency situations that are not reasonably foreseeable, your site may need to temporarily rely on informal interpreters.

4. Has HUD Made Any Efforts to Translate It's Documents Into Other Languages and If So, How Do I Access Them?

A number of HUD documents that are relevant to the occupancy cycle have been translated in addition to the leases. The documents are listed below and can be obtained on HUD's website:

<http://www.hud.gov/offices/fheo/promotingfh/lep.cfm#fact-sheets>

Please review your site's Language Assistance Plan to obtain specific information as to how to utilize these forms in conjunction with the English version. For example, although HUD has translated the HUD leases into multiple languages, the English version must be signed and the corresponding lease in the primary language of the applicant must be stamped for informational purposes only.

Also, although HUD has provided translated annual recertification notices and interim notices, these may not correspond with your site's and may not be able to be used.

Annual Recertification Initial Notice (HUD Handbook 4350.3, Exhibit 7-1)	<u>Amharic</u> <u>Arabic</u> <u>English</u> <u>Armenian</u> <u>Cambodian</u> <u>Chinese</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Portuguese</u> <u>Russian</u> <u>Spanish</u> <u>Tagalog</u> <u>Vietnamese</u>
Annual Recertification First Reminder Notice (HUD Handbook 4350.3, Exhibit 7-2)	<u>Amharic</u> <u>Arabic</u> <u>Armenian</u> <u>Cambodian</u> <u>Chinese</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Portuguese</u> <u>Russian</u> <u>Spanish</u> <u>Tagalog</u> <u>Vietnamese</u> <u>English</u>
Annual Recertification Second Reminder Notice (HUD Handbook 4350.3, Exhibit 7-3)	<u>Amharic</u> <u>Arabic</u> <u>Armenian</u> <u>Cambodian</u> <u>Chinese</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Portuguese</u> <u>Russian</u> <u>Spanish</u> <u>Tagalog</u> <u>Vietnamese</u> <u>English</u>
Annual Recertification Third Reminder Notice/Notice Of Termination (HUD Handbook 4350.3, Exhibit 7-4)	<u>Amharic</u> <u>Arabic</u> <u>Cambodian</u> <u>Chinese</u> <u>French</u> <u>Farsi</u> <u>Korean</u> <u>Portuguese</u> <u>Russian</u> <u>Spanish</u> <u>Tagalog</u> <u>Vietnamese</u> <u>English</u>
Model Form of Notification of Rent Increase Resulting From Recertification Processing	<u>Amharic</u> <u>Arabic</u> <u>Armenian</u> <u>Cambodian</u> <u>Chinese</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Portuguese</u> <u>Russian</u> <u>Spanish</u> <u>Tagalog</u> <u>Vietnamese</u> <u>English</u>
Interim Adjustment Initial Notice (HUD Handbook 4350.3, Exhibit 7-7)	<u>Amharic</u> <u>Arabic</u> <u>Armenian</u> <u>Cambodian</u> <u>Chinese</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Portuguese</u> <u>Russian</u> <u>Spanish</u> <u>Tagalog</u> <u>Vietnamese</u> <u>English</u>
<u>Interim Adjustment Termination of Assistance (HUD Handbook 4350.3, Exhibit 7-8)</u>	<u>Amharic</u> <u>Arabic</u> <u>Armenian</u> <u>Cambodian</u> <u>Chinese</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Portuguese</u> <u>Russian</u> <u>Spanish</u> <u>Tagalog</u> <u>Vietnamese</u> <u>English</u>
Resident Rights & Responsibilities Brochure	<u>Amharic</u> <u>Arabic</u> <u>English</u> <u>Armenian</u> <u>Cambodian</u> <u>Chinese</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Portuguese</u> <u>Russian</u> <u>Spanish</u> <u>Tagalog</u> <u>Vietnamese</u>

Model Lease for Subsidized Programs (Form HUD 90105-a)	<u>Amharic</u> <u>Arabic</u> <u>Armenian</u> <u>Cambodian</u> <u>Chinese</u> <u>English</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Portuguese</u> <u>Russian</u> <u>Spanish</u> <u>Tagalog</u> <u>Vietnamese</u>
Model Lease for Section 202/8 or Section 202 PACs (Form HUD 90105-b)	<u>Amharic</u> <u>Arabic</u> <u>Armenian</u> <u>Cambodian</u> <u>Chinese</u> <u>English</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Portuguese</u> <u>Russian</u> <u>Spanish</u> <u>Tagalog</u> <u>Vietnamese</u>
Model Lease for Section 202 PRACs (Form HUD 90105-c)	<u>Amharic</u> <u>Arabic</u> <u>Armenian</u> <u>English</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Cambodian</u> <u>Chinese</u> <u>Portuguese</u> <u>Russian</u> <u>Spanish</u> <u>Tagalog</u> <u>Vietnamese</u>
Model Lease for Section 811 PRACs (Form HUD 90105-d)	<u>Amharic</u> <u>Arabic</u> <u>Armenian</u> <u>Cambodian</u> <u>Chinese</u> <u>English</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Portuguese</u> <u>Russian</u> <u>Spanish</u> <u>Tagalog</u> <u>Vietnamese</u>
Lease Addendum - Violence Against Women and Justice Department Reauthorization Act of 2005 (HUD 91067)	<u>Amharic</u> <u>Arabic</u> <u>Armenian</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Chinese</u> <u>English</u>
Supplement to Application for Federally Assisted Housing (HUD 92006)	<u>Amharic</u> <u>Arabic</u> <u>Armenian</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Chinese</u> <u>English</u>
Certification of Domestic Violence, Dating Violence or Stalking (HUD 91066)	<u>Amharic</u> <u>Arabic</u> <u>Armenian</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Chinese</u> <u>English</u>
Document Package for Applicants/Tenant's Consent to the Release of Information (HUD 9887/A, Form HUD-9887, Form HUD-9887-A, and Relevant Verifications)	<u>Amharic</u> <u>Arabic</u> <u>Armenian</u> <u>Farsi</u> <u>French</u> <u>Korean</u> <u>Cambodian</u> <u>Chinese</u> <u>Portuguese</u> <u>Russian</u> <u>Spanish</u> <u>Tagalog</u> <u>English</u>

Public & Indian Housing

How Your Rent is Determined for Public Housing and Housing Choice Voucher Programs	Chinese English Korean Spanish Vietnamese
Housing Choice Vouchers Fact Sheet	English Spanish

Public & Indian Housing (PIH)

Authorization for the Release of Information/Privacy Act Notice	Form HUD - 9886	Arabic Cambodian Chinese Creole English Hmong Korean Russian Spanish Vietnamese
Certification of Domestic Violence, Dating Violence or Stalking	Form HUD 50066	English Arabic Cambodian Chinese Creole French Hmong Korean Lao Russian Spanish Vietnamese
Request for Tenancy Approval	Form HUD 52517	Arabic Cambodian Chinese Creole English French Hmong Korean Russian Spanish Vietnamese
Tenancy Addendum	Form HUD - 52641-A	Arabic Cambodian Chinese Creole English French Hmong Korean Russian Spanish Vietnamese
Housing Assistance Payments Contract (HAP Contract)	Form HUD - 52641	Arabic Cambodian Chinese Creole English French Hmong Korean Russian Spanish Vietnamese

Voucher Housing Choice Voucher Program	Form HUD - 52646	Arabic Cambodian Chinese Creole English French Hmong Korean Russian Spanish Vietnamese
Statement of Homeowner Obligation	Form HUD - 52649	Arabic Cambodian Chinese Creole English French Hmong Korean Russian Spanish Vietnamese
Family Self- Sufficiency (FSS) Program Contract of Participation	Form HUD - 52650	Arabic Chinese Creole Cambodian English French Hmong Korean Russian Spanish Vietnamese
Family Self- Sufficiency Program FSS Escrow Account Credit Worksheet	Form HUD - 52652	Arabic Cambodian Creole Chinese English French Korean Russian Spanish Vietnamese

5. Is My Site Required To Hire An Interpreter So Staff Can Communicate With Someone Who Is Deaf And Uses An Interpreter To Communicate Effectively?

If a resident needs a sign language interpreter to be able to communicate effectively with you, the site will need to provide one, provided the site can afford to do this. For many people who are deaf, sign language (a language that uses a system of manual, facial and other body movements as the means of communication) is their first language (with English being their second) and is, therefore, the preferred method of communication in such instances.

Your site needs to know how to obtain a hearing interpreter. One way to do this is by contacting the Massachusetts Commission for the Deaf and Hard of Hearing by calling 617-740-1600 or Toll Free: 800-882-1155 Voice. This agency also has a system in place for off hour emergency situations, such as medical, mental health, and legal. To request an emergency interpreter you can call 1-

800-249-9949 TTY/Voice. When you are communicating with someone through a sign language interpreter, talk to and look at the person, not the interpreter.

6. How Do I Communicate Effectively With Someone Who Is Deaf If They Don't Use An Interpreter Or If Someone Is Hard Of Hearing?

Don't assume that if someone is deaf or hard of hearing that the only way to communicate with him/her is to sign, or that what works for one person will work for another person. Not everyone who is deaf or hard of hearing uses sign language to communicate. Some people communicate through a combination of hearing aids, finger spelling, reading lips and speaking and/or writing notes back and forth. For many people with hearing loss, they will need you to repeat what you say more than once. Demonstrate that you will do this without showing any sign of impatience or annoyance with the repetition. Having the discussion in a well lit, glare-free room with no to minimal background noise will make it easier for the person to clearly see your face, read your lips and increase the clarity of the spoken words. At all times you must face the person directly when you are speaking. Also make sure that there is nothing blocking your face such as your hand, a coffee cup, pen, etc. Before deciding how to communicate with a person who is deaf or hard of hearing you are required to give primary consideration to what that person states will be the most productive.

7. How Do I Communicate With Someone Who Is Deaf or Hard of Hearing When Using The Telephone?

Some people who are deaf or hard of hearing can use a traditional phone with an amplifier. If you need to call someone who is deaf or hard of hearing and they don't use a standard phone, ask if they use a telecommunications device for people who are deaf. The short name for this is a TDD. Other names for TDD include TTY (telephone typewriter or teletypewriter). A TDD is a device that is connected to a phone that allows people to communicate through the typewritten word. It works like texting on a cell phone and Instant Messaging on the computer. If your site doesn't have a TDD/TTY, the telephone company has a relay operator that uses a TDD/TTY (and other technologies including video relay) who you can call to assist you with communication. **All relay calls are confidential.** In any state, a person who is deaf or hard of hearing can reach a

relay operator by dialing “711”. The Relay Operator will then call you and instruct you how to use the relay operator to communicate with the person who is deaf or hard of hearing. Likewise, if you want to call a resident who is deaf or hard of hearing you would call a Relay Operator by dialing “711” or “0” and asking to be connected to a Relay Operator. The Relay Operator will ask you your name, who you are calling and his/her telephone number. Again, the Operator will ask you if you know how to use a Relay Operator. If you don’t, he/she will explain how the process works. The mistake many people make when using a relay operator is talking to the operator as someone who is going to deliver a message to a third party rather than talking to him/her as if he/she were the person they are calling. For example, you should speak directly to the applicant and say “Mrs. Jones, I look forward to meeting you at your interview this Thursday at 3:00 p.m.” instead of relaying a “message” to the operator by saying “please tell Mrs. Jones I will see her at her interview this Thursday at 3:00 p.m.” This is an easy mistake to make and the Relay operator will correct you if you make it.

In addition to the traditional TTY relay, people who are deaf or hard of hearing may also have access to Internet Protocol (IP) relay, or Video Relay Services (VRS). Video Relay Services allows a deaf or hard of hearing person to make a telephone call via an Internet video connection between the user and the relay center which is staffed with sign language interpreters. Some people prefer these types of relay because it allows people to communicate using sign language and happens at a more normal speed. Also, newer text-based communication methods, such as **short message service** (SMS), **Internet relay chat** (IRC), and **instant messaging** have also been adopted by people who are deaf or hard of hearing as an alternative or in addition to TDD. If a resident has requested you use a particular method of communication you must respect his/her requested method and not what may be your particular preference.

There are some common abbreviated words that people who use a TTY/TDD use to communicate. First and foremost is using “GA”, which stands for “Go Ahead” to signal that you’ve completed your thought and that the other person should begin. Also, you need to make sure when ending a conversation that you write you are ending it and why. The signoff signal (SK) is usually repeated, and you shouldn’t end the conversation without making sure the other person or people are really ready to end it (“GA or SK”--“go ahead or sign off”).

The following are some commonly used abbreviations:

ABT	About
ANS	Answer
ASAP	As soon as possible
BRB	Be Right Back
CA	Communications assistant (another term for a relay operator)
CC	Close-captioned
CD	Could
CN	Can
CUL	See You Later
GA	Go Ahead
GA TO SK	Go ahead if you have more to say but I'm finished
HAND	Have a nice day
HD	Hold
HOH or HH	Hard-of-hearing
INFO	Information
IMPT	Important
LK FRWD	Look forward
LTR	Letter
SK	Stop Keying
SKSK	Now hanging up
Q, QQ, QM	Question Mark (?)
PLS	Please
RO	Relay Operator
OIC	Oh, I See
OPR	Operator
NBR	Number
TMW	Tomorrow
THX	Thanks
WRU	Who are You? (or Where are You?)

8. Are There Certain Things I Should/Shouldn't Do When Using A Language (Including Sign) Interpreter?

Obtain a signed statement from the interpreter stipulating he/she will adhere to the role of an interpreter.

Make sure everyone is aware that the interpreter is required to maintain strict confidentiality.

Make sure the "environment" is comfortable and works for everyone. For example, good lighting, unobstructed vision and a non-glare/distracting background are really important when working with a sign language interpreter. Likewise, loud noise can interfere with oral interpretation.

Situate your body so you are facing the applicant/resident and can look at him/her directly. A hearing interpreter will usually sit across from the resident and next to you so he/she can follow what the interpreter is signing and watch you at the same time. The resident should direct where he/she wants the interpreter to sit.

Make direct eye contact with the applicant/resident;

Always speak directly to the resident, never to the interpreter unless you've been asked by the resident to do otherwise. For example, you would say, "Mrs. Jones, what's wrong with your sink," rather than, "Please ask Mrs. Jones what's wrong with her sink";

Don't talk slowly (unless someone is lip/speech reading and has asked you to do so), rapidly, loudly or enunciate in an exaggerated manner. Rather, speak audibly and clearly, as you normally would. Using voice and mouth movement helps a person who has some lip reading skills and/or residual hearing. However, a loud voice and exaggerated mouth movement interferes with understanding the voiced message. The interpreter will tell you if something needs to be repeated or if you need to slow down;

When you are talking, don't cover your mouth or face. Natural facial expressions and gestures will provide important information to your conversation. Facial expressions are a critical part of communication because they convey the emotions and tone of the conversation. Signing without facial expression is similar to monotone speech. If you don't think the person understands what you're saying or you don't understand what he/she is saying, don't pretend you do. Try to ask questions to figure out where is the breakdown in communication. Try rephrasing something.

Use transitional phrases to let the interpreter and the person know you're changing topics or are finished speaking. If someone is deaf or speaks a different language they won't necessarily know when you've finished your thought. They may also not be aware when your voice drops off indicating you're finished or may perceive it differently because the same signal isn't used in their language. If you don't make it clear, then the resident may jump in when you aren't finished and you may perceive their behavior as rude, which isn't the case.

Interpreting is a difficult job. Make sure you check in with the interpreter to see if he/she needs breaks. Most interpreters take a break every 30 minutes if the session will be long. Also, if it's an all day event, two interpreters may be necessary to give each a break and to keep the conversation/meeting going.

Provide any material you think that will give the interpreter the background before he/she begins to interpret.

Don't ask the interpreter his/her opinion about the applicant/resident. The interpreter is **solely** there for the purpose of interpreting.

Don't say things to the interpreter you don't want repeated to the resident.

Don't stop speaking because you're waiting for the interpreter to begin/stop interpreting. The interpreter will tell you if you need to slow down.

9. How Should I Get The Attention Of Someone Who Is Deaf or Hard of Hearing Without Being Rude?

What is considered “rude” behavior in the hearing world may not be considered so by deaf culture and vice versa.

If you need to enter the unit of someone who is deaf or hard of hearing you need to have a system of notification in place that will work because the standard “knocking before entering” won’t. One way is to have a strobe light that flashes when a door buzzer is rung. Another approach is to “call” ahead using the TDD or Relay Operator or texting the person if you have their cell number.

If you are trying to get the attention of a person who is deaf or hard of hearing (who isn’t responding to your voice) you could wave your hands, flash lights, stomp feet on the floor or tap the person on the shoulder. Also know that people who are deaf may use these methods to get the attention of others.

If two people are signing and you need to get one or both people’s attention it may not be effective to simply stand there, watch and wait to be acknowledged. Your intent may not be understood. It isn’t considered rude in deaf culture to interrupt a signed conversation by making eye contact and/or gesturing and waiting until the person or persons you want turns to talk with you.

Also, contrary to the hearing world which considers it rude to not apologize when interrupting a conversation in order to pass by, deaf culture considers it impolite for someone to do so. The ideal when any two people are having a conversation and you needed to pass by them would be to seek a path that doesn’t require you to interrupt them. When this isn’t possible, and two people are signing simply walk quickly between them and if you know how to sign, you could sign excuse me, assuming you know how to do this.

10. I’m Friendly With Residents. Is It Ok For Me To Talk With Them About Personal Stuff?

It is sometimes tricky setting boundaries, especially if you are on the front line and working with residents. On the one hand, if you’re not friendly and/or don’t take the time to chat you may be thought of as a jerk. If you’re too friendly and talk with residents about personal stuff you can get accused of “favoritism” or prying into their personal lives. Also sometimes what happens is that you end up talking about things that can get you into trouble. For example, it is generally against the law to make any inquiries about whether or not someone has a

disability. This means that you should avoid any discussions with residents about the nature or severity of their disability. Many residents share information without being asked and tell you far more than you'd ever want to know about their medical situation. Without being rude, do not engage in discussions about a person's disability. The golden rule is that no one on the site can ask information relating to someone's disability unless he/she **needs to know** it; not just because they want to know it.

Example 1:

You have been asked to install a grab bar. It is acceptable for you to talk to the resident about placement of the grab bar and essential that you follow the requirements contained in the applicable building code unless told to do otherwise to meet the resident's specific needs. It's not okay for you to ask the resident why he/she needs the grab bar or how he/she managed without the grab bar.

Example 2:

You enter a unit because you've been informed by other residents that a funny odor is coming from the unit. There are dishes stacked up, old food everywhere, the bathroom has fungus growing in it, and the carpet in the living room looks like it hasn't been vacuumed in months. Mrs. Jones, an 86 year old resident, starts talking to you explaining that she just can't keep up with things anymore. She's tired. It's okay to acknowledge her comments with "I'm sure it must be difficult" or "I'm concerned because you're violating your lease." You can't say things like, "Do you think you should be living independently now" or "I think you need someone to help you." You may think the latter too, but you can't say it to them. You may ask if she would like assistance in getting help.

Example 3:

You run into a resident in the lobby of your site. You've known her since you were a small child and haven't seen her for a while. She fills you in on the news of her family and you listen because it would be disrespectful to cut her off. She then starts talking to you about her health and that she's been diagnosed with

Multiple Sclerosis. Your wife also has the disease, and you start comparing notes about doctors, treatment plans, medications, etc. Although this conversation was purely “innocent” the law would consider the questions you asked the resident to be illegal. You might think that the likelihood of your friend suing you for “asking” these questions is small or none. However, you may think differently if the resident violates her lease and management seeks to evict. Suddenly, your innocent conversation potentially takes on a whole new meaning.

Likewise, you should never ask people directly about their sexuality or gender, or assume that they are heterosexual when chatting with them. If a person should choose to speak to you about their sexuality or gender identification, there is no reason for you to repeat this information to anyone else. It doesn't affect anyone's health or safety and therefore repeating it falls into the “gossip” category. Simply, it is inappropriate to disclose and discuss information about others that doesn't need to be disclosed. If someone does disclose to you information about their sexuality or gender identification, avoid asking questions that you don't need to know the answer to in order to do your job. For example, avoid asking the following:

In your relationship, which are you, the male or female?

I know you say you're gay, so does that mean you really want to be a woman?

I know you say you're a lesbian, have you tried being with a guy?

11. I'm Friendly With Residents and Have Worked At My Site For A Long Time. Is It Okay For Me To Talk With Them Like I Would With My Friends?

The short answer is no. You are a professional and work at the site. You have to remember that things you might joke with your friends about or say to your friends you can't say to residents (or your co-workers). Likewise, you can't behave around residents like you would around your friends.

Comments that you intend as complimentary can be construed by residents as inappropriate and offensive. They can also be considered sexual harassment if they're unwelcome and offensive, and are severe or pervasive. For example, it is clear to most people that it is sexual harassment if a resident is required to provide sex in order to continue to live in the unit. However, there are a lot of

different types of behavior (verbal, physical and non-verbal) that can reasonably be construed as sexual harassment by a resident if it is “unwelcome.” These include comments about clothing, personal behavior, or a person’s body; sexual or sex-based jokes; repeatedly asking a person out; sexual innuendoes; and telling stories or making comments about a person’s personal or sexual life. It also includes inappropriate physical conduct like touching a person or a person’s clothing, putting an arm around another person, kissing, hugging, patting, stroking (hair, arm...) and non-verbal things like looking up and down a person’s body; derogatory gestures or facial expressions of a sexual nature; and following a person around. Please review your company’s Sexual Harassment Policy.

Likewise, jokes, the use of certain terms and off-handed comments can be interpreted as you being prejudiced against a group of people protected by the law. For example, comments like HIV/AIDS is a “gay” disease or is “God’s wrath” against people who are gay may express the speaker’s view, or the speaker may be “joking.” However, many people wouldn’t perceive this as funny, or appropriate. Rather, it conveys definitive views about people who are gay. It implies that people who are gay “deserve” to be punished because they are gay. Likewise, comments that refer to things or behavior that is negative as “gay” is also unacceptable and inappropriate.

Other behavior that is inappropriate includes:

Using derogatory or slang names related to religion, race, gender, ethnicity, disability, or sexual orientation, even if you “don’t mean anything by it”.

Imitating a resident (or fellow employee) in a manner that makes fun of a speech impediment, a person’s accent, and specific mannerisms that may be associated with sexual orientation.

Comments that may show insensitivity to cultural differences, such as making negative remarks about the unusual food odors that come from an apartment, and referring to residents as “those people”.

Discussing the culture, race, gender, religion, or sexual orientation of a co-worker or other resident at all, especially in a disparaging manner.

Making comments connecting a religious group, ethnic group, or people based on sexual orientation with atrocities in life, such as linking homosexuality with pedophilia or child abuse and “all” people of Middle Eastern descent with 9/11.

Also, sometimes people are having a conversation and a comment is made that “crosses the line” in the other person’s opinion. If you’ve made a comment or joke about a person’s race, color, religion, sex, national origin, disability, marital status, sexual orientation, or age and they object don’t dig yourself deeper into the hole by continuing to make comments once a person has objected to the behavior. Rather, apologize if you offended someone and explain it wasn’t your intent to say or do anything offensive. It is also recommended that you document the incident in writing when you return to the office. If the person was offended and “perceived” you discriminated against him/her, he/she may choose to speak with your supervisor or file a complaint. The easiest way for you to defend yourself is if you document the facts as quickly as possible, making your supervisor immediately aware of the “who”, “what”, “where” and “when” of the situation that transpired.

12. Are There Certain Terms/Descriptions That Are Better Not To Use When I Am Talking About Someone In A Protected Class?

Unless a person’s protected status is relevant, don’t refer to it at all. In other words, comments like “the stove in unit 223 where the deaf woman lives needs to be fixed” or “the black guy in unit 225 is coming in for his recertification interview on Wednesday” are problematic. The fact that the resident is deaf or black is irrelevant to you being in the unit and fixing the stove or helping a person.

Don’t use derogatory terms or slang.

Be aware of terms that may be “outdated” or considered insensitive. For example, using terms such as “handicapped”, “physically challenged”, “crippled”, or “deformed” when describing someone with a disability, and “able-bodied” and “normal” when describing someone without a disability.

Try not to categorize people. Words that refer to people’s protected status should only be used as an adjective to describe someone when it is relevant as opposed to a noun. In other words, people are people first and they have a disability, are a particular race or races, practice a religion, have a sexual orientation, etc. This means that rather than referring to someone as “the

epileptic” you would say “the person with epilepsy.” Rather than saying “the Jew” you would say “the person who is Jewish.”

Try to use expressions that aren’t emotional when describing someone with a disability or express your feelings about their disability. For example, avoid saying "victim of," "afflicted with" and referring to people with disabilities as “invalids.” Likewise, rather than using the expression “confined to a wheelchair” say “uses a wheelchair”.

When referring to an accessible entrance or transportation services at your site, avoid using the word “special.” Many people consider this word as a way of segregating people with disabilities, where as the term “accessible” focuses on integration.

Make sure you address all people at your site in the same manner. In other words, if it is your site’s policy to address people by their surname, including Mr., Mrs., Miss, or Ms., then make sure you consistently do this. People in protected classes are often called by their first name rather than their last name, or not referred to by name at all.

13. What Should/Shouldn’t I Do If Someone Complains To Me That Another Resident Said Something or Did Something That Could Be Considered Offensive or Harassment?

Don’t ignore or fail to take seriously a person who reports or complains of harassment (physical or verbal) or expresses they are upset about a remark that could be construed as racist, homophobic, anti-Semitic, anti-Muslim etc. Do not blame the person who reports or complains of harassment, or suggest they are “thin skinned”, “too sensitive”, or that they “don’t have a sense of humor”. Also, don’t assume because someone has a disability or is a “difficult” resident that he/she isn’t telling the truth. For example, don’t assume because someone has paranoid schizophrenia that she’s not telling the truth when she tells you her neighbor is harassing her.

If a resident tells you about the incident management is considered being put on notice. Please follow your company’s policy regarding taking action. It is recommended that you immediately report the incident to the manager and

encourage the resident to do the same. If you are the manager, it is recommended you contact your Regional Manager/Supervisor to discuss how to handle the situation.

F. QUESTIONS RELATING TO TRASH REMOVAL, CLEAN UP, MAINTENANCE REQUESTS, SNOW REMOVAL AND EMERGENCY EVACUATION PLANS

In accordance with Massachusetts law your site is responsible for proper disposal and collection of trash. Localities have rules that specify trash days, when the trash needs to be out by, and sometimes specific requirements for disposal (such as weight and size limits of barrels).

Trash policies need to include proper disposal of bio-hazardous waste by residents. Likewise, maintenance and safety personnel need to be clear on proper procedures, including OSHA requirements, when dealing with bio-hazardous materials. Each policy should include the use of universal health precautions. Taking universal precautions means that situations where you **could** come into contact with blood and certain body fluids should be treated as if they are known to contain HIV, Hepatitis B, Hepatitis C or other blood borne infections.

A site's policy regarding trash removal and disposal of hazardous materials must be fairly and effectively implemented to avoid charges of discrimination. For example, if you are a maintenance provider at a site that serves elders and younger people with disabilities and you choose to help all of the elderly women in your development with their trash removal because you feel sorry for them or because you are friendly with them, you run the risk of residents charging discrimination based on gender, age and disability. Likewise, if you "ignore" Mrs. Jones' dumping her trash in an unsafe manner, but complain when others do, you are treating residents differently and make it easy for charges of discrimination.

Any policy regarding trash removal and disposal of hazardous materials must be communicated to all employees and residents. This includes people with limited

English proficiency and people with disabilities who need auxiliary aids (Braille, large print...) in order to effectively communicate the policy. Failure to do so will lead to charges of discrimination on the basis of national origin and disability.

Likewise, all companies need to have and effectively communicate policies and procedures on maintenance requests. This includes how a resident makes a request and the order in which maintenance providers respond to those requests.

1. Can I Pick And Choose Who I Assist With Trash Removal?

No. Fair housing laws require that all policies and procedures be implemented consistently. This means that you must approach requests for assistance with trash removal the same for all residents unless your manager has communicated to you an exception based on a reasonable accommodation for a person with a disability. In other words, you can't agree to help one resident remove his/her trash and not another resident. Sometimes this is not easy to follow, especially when you've worked at the same site for a long time and have a relationship with residents who have lived there for a number of years. Staff members who have worked at a site for a long time often become surrogate family members for residents and residents rely on them to "help" them with things that aren't within a staff person's job description. It is difficult at best under these circumstances to say "no" to someone. The problem is that if you don't say no you are treating residents differently and it is easy for someone to accuse you of "discrimination" or unfair treatment. Discrimination can be "perceived" even if not intended especially when newer residents are of a different Race or Ethnic background than long time residents as a result of demographic changes in a neighborhood, or when a building that was historically comprised solely of elderly households more recently has younger people with disabilities. Always keep in mind "Do not do for one what you are not willing and able to do for all."

2. What Should Management Do If The Way People Are Required To Remove Their Trash Has A Greater Impact On People With Disabilities?

The trash removal policy you have in place can't have a disparate impact on people with disabilities unless it is necessary and there isn't a less discriminatory

policy/method of trash removal. Review your policy to figure this out. For example, is your trash receptacle at a height that makes it impossible or difficult for someone who has a mobility impairment to reach and dispose of the trash? If the resident needs to open a door to dispose of her trash, is the door heavy to open? Does it have hardware on it that is accessible? When you are handling trash, make sure you are using universal health precautions. Notify the manager if there's an issue that you recognize or if a resident raises a concern to you.

3. Can I Choose To Not Answer Maintenance Requests From Certain Residents Because I Think He/She Has A Communicable Disease?

No. You can't choose to ignore the maintenance requests of residents because they have a disability or the nature or severity of their disability. Nor can you discriminate against them by refusing to do work in their unit because you think they have a disability. Your site must have procedures in place to protect workers from blood borne contagious diseases, such as Hepatitis B Virus (HBV), Hepatitis C Virus (HCV), and Human Immunodeficiency Virus (HIV) and air borne contagious diseases, such as meningococcal disease and tuberculosis. It is your responsibility to follow these procedures. Contact your local health department for advice if necessary.

4. Can/Should I Take Different Precautions Based On If I Know The Resident, Or What I Know About Them?

No. You must take the same precautions regardless of which resident requests assistance and what you know about a resident. Use the same "universal" health precautions in all residents' units. Taking universal precautions means that situations where you **could** come into contact with blood and certain body fluids should be treated as if they are known to contain HIV, Hepatitis B, Hepatitis C or other blood borne infections. Don't pick and choose what precautions you use based on who the resident is, or what you think you know about him/her. To do otherwise is discriminatory if the level of precautions is based on protected status. Focus instead on the task you are being asked to do and whether that task has potential risks.

Every company needs to have policies and procedures in place regarding how maintenance providers should handle situations that **may** involve bio-hazardous

materials, including blood, and/or medical equipment such as syringes suspected of having been in contact with the same. The safest approach is to treat unknown circumstances with a potential for exposure as though exposure to harm were likely. This includes vomit, urine and feces, which could have blood in it. As such, when you come into contact with one of these substances, it is wise to consider the substance as hazardous, or as if there is likelihood it could be so. For example, if you come across a syringe on the grounds of the development when you are cleaning the outside, you should assume for safety purposes that the syringe has a person's blood on it, that it's hazardous, and that you need to dispose of it in a manner accordingly.

Staff handling such waste needs to be trained and qualified to do so. In an ideal situation, an outside company with a solid reputation, appropriate insurance and trained professional employees would be called in to handle all bio-waste removal. This may not be possible or practical in all cases. Anyone responsible for bio-waste removal is required to follow OSHA regulations regarding exposure to bio-hazardous waste. For more information please see <http://www.osha.gov/SLTC/hazardouswaste/index.html>

Certain situations provide an increased risk of exposure to biohazards. These include, but are not limited to the following:

- Cleaning in residential units or common restrooms;
- Handling of trash and debris;
- Repair and maintenance of sewage lines or waste water systems; and
- Accidents including cuts, abrasions, human waste or vomit.

Standard Safety Precautions

The following is a summary of pre-cautionary reminders relating to the above that should be utilized consistently:

a) Cleaning in Residential Units or Common Restrooms

Use heavy-duty rubber or latex gloves (or equivalent) for cleaning areas where biohazards could be present, and dispose of such gloves properly.

Consolidate trash resulting from cleaning including paper towels, sponges, scouring pads and residential trash. Bundle resulting trash to ensure waste remains confined.

Sanitize all cleaning equipment after use.

Use separate equipment for residential unit and restroom cleaning as opposed to common area cleaning.

b) Handling of Trash and Debris

Use heavy-duty leather or canvas gloves (or equivalent) for handling trash and debris to ensure protection from sharp objects and because staff frequently find condoms, needles, Band Aids® or other potentially hazardous materials around the property.

Always handle trash and debris with caution. Do not clutch trash bags to your body because you may puncture the trash bag thereby exposing yourself to hazardous material or sharp objects.

Obtain help for heavy trash.

Never throw trash bags because the bag may tear or burst thereby exposing you to hazardous material as well as contaminating the site.

Keep dumpsters closed tightly.

Keep trash storage containers, dumpsters, pens and chutes clean.

Use heavy-duty rubber or latex gloves (or equivalent) for cleaning areas where biohazards could be present. Avoid touching personal items, such as combs, when not wearing gloves. Wash hands as soon as possible after removing gloves.

c) Repair and Maintenance of Sewage Lines or Waste Water Systems

Use heavy-duty rubber or latex gloves (or equivalent) for working in areas where biohazards could be present. (Leather or canvas gloves will absorb sewage.)

Thoroughly clean and sanitize all work areas.

Sanitize all repair equipment after use.

Contract with a testing laboratory in the event sewage or waste-water has come in contact with residential or common areas to ensure no biohazards are present.

Use licensed professionals trained in waste removal and cleaning as appropriate.

d) Accidents Including Cuts, Abrasions, Human Waste or Vomit

Treat all such incidents as though the presence of biohazards were likely.

Seek medical assistance for all parties as appropriate and report any concern of exposure to your manager.

Use Personal Protection Equipment as appropriate while assisting all such individuals.

Contact appropriate industry professionals for clean-up and handling of potentially hazardous materials.

Ensure all employees are trained in policies and procedures relating to emergencies and potential exposure to bio-hazardous waste.

5. How Do I Tell if Someone Has a Hoarding or Clutter Problem?

Some people use the term clutter, but most mental health and public health professionals use the term hoarding to refer to situations where there is so much “stuff” that significant violations of health, safety and/or building codes occur.

Your primary focus should be on identifying specific ways in which the violations threaten the health/safety of the unit occupant and building residents. Is there a clear path to doors and windows? Are there items on or near the stove or in the oven that could cause a fire? Are things stacked so high that they could fall and injure someone in the unit? Are they so heavy they might be causing structural problems? Is there food litter causing infestation or blocked plumbing issues causing mold build-up? (See HOMES Multi-Disciplinary Hoarding Risk Assessment Tool

https://www.masshousingrental.com/portal/server.pt/gateway/PTARGS_0_1_2725_8545_0_0_18/HOMES_Risk_Assessment.doc)

These are the kinds of things that may alert you to a problem. You can think of clutter as being on a scale of 1-10 where 1 is no clutter and 10 is so cluttered that you cannot move about the unit. If you think it is a health or safety violation – possibly a rating above a 5 - you need to speak with the property manager regarding the situation. For more information on hoarding please see MassHousing’s website

https://www.masshousing.com/portal/server.pt?open=512&objID=239&&Pa gelID=3089&mode=2&in_hi_userid=2&cached=true

6. What Should I do if I Believe Someone Has a Hoarding or Clutter Problem?

You need to be clear about expectations and limitations related to meeting safety standards in the home. It is crucial to stay focused on any health and safety issues found and on the need to be able to complete repairs in a manner that is non-judgmental. Staff should share their concerns with a resident service coordinator and/or property manager and play an active role in helping to address the issue with the tenant. The initial interaction between resident and maintenance staff can have a significant influence over the outcome of the hoarding situation. Using language that clearly focuses on health/safety issues rather than housekeeping choices or laziness and use of non-judgmental language will help to prevent creating an atmosphere where the resident becomes defensive. Also, hoarding is a recognized disability and individuals who hoard may request a reasonable accommodation (time and assistance to reduce the clutter to comply with applicable codes). Many people who hoard, however, do not acknowledge that they have such a problem and may refuse help, which is their right. However, they may face consequences if they are unable to achieve lease and code compliance. For more information please see MassHousing's resources at

https://www.masshousing.com/portal/server.pt?open=512&objID=239&&PageID=3089&mode=2&in_hi_userid=2&cached=true

7. How Do I Work in a Unit Where the Resident has a Clutter or Hoarding Problem?

Always be aware of using non-judgmental verbal and non-verbal (body language) cues when talking about health/safety violations in a unit.

If an item or items need to be moved to complete a repair, ask the tenant to move the item or ask for permission to move the item. If moving items, ask where the tenant would like them to be relocated.

Do not advise tenants to clean the items out or “get rid of it all”, stay focused on the health/safety codes or need for repairs. Ask if they need assistance with the plan they develop to address the issue.

If you are going to talk with the property manager or resident service coordinator, tell the tenant that you are obligated to do so first.

If you believe it is a health or safety issue you need to follow your company's procedures for reporting such violations.

For more information please see MassHousing's resources at https://www.masshousing.com/portal/server.pt?open=512&objID=239&&PageID=3089&mode=2&in_hi_userid=2&cached=true

8. Are There Rules That I Have To Follow Regarding How I Do Snow Removal?

Snow removal in New England can be very stressful for maintenance providers and management. Massachusetts law requires housing providers to make sure that all areas of egress are clear of snow and ice, so tenants can come and go safely. This includes all access ramps. Local ordinances such as Boston's will specify the time frame in which the paths must be cleared or made safe. Also, remember that it won't be sufficient to clear a small pathway on the sidewalks. You will need to either clear the entire sidewalk for safety reasons or at least make sure the pathway is wide enough (36") to give people who use wheelchairs enough clearance to navigate the sidewalk. Some ordinances such as Boston's will specify the **minimum** width that must be cleared (42"). Also, a recent court decision by the highest court in Massachusetts has emphasized the importance of housing providers removing snow and ice effectively and in a timely manner in order to avoid liability.¹⁴

Also, you may be required to do snow removal within a certain time frame after the snow has stopped, or clear additional areas because of local ordinances and/or lease provisions. For example, housing sites that are funded by HUD use a lease that requires management to remove snow from all common areas, including parking lots. Also, even if a housing provider isn't required to remove snow from such areas, some do so because they are afraid if they don't and someone slips and falls that they will be sued. Some management companies also choose to subcontract this task for reasons that include being sued for damages if they shovel a driveway or walkway and a tenant then slips and falls. All sites need to have a written policy that lays out for residents who is responsible for what aspects of snow removal and the time frame in which snow must be removed. It is highly recommended that management provide a

¹⁴ See *Papadopoulos v. Target Corp.* SJC 5029 at <http://www.scribd.com/doc/34891739/Mass-SJC-Ruling-In-Papadopoulos-v-Target-Corporation>

reminder notice of the snow removal policy to all residents on an annual basis before the first snowfall is anticipated. One of the issues that management needs to grapple with before it comes up is whether maintenance staff will or will not move residents' cars in order to facilitate the clearing of the parking lot. There is no right or wrong approach. There are advantages and disadvantages to each approach, as well as liability concerns regardless of which approach management takes. If the policy states that maintenance staff or a third party contractor will assist residents with removal of their cars, there is potential liability if the car gets damaged. However, there is also liability if a resident slips and falls while shoveling out their car because management hadn't cleared the parking lot.

If the policy provides that residents are required to move their own cars so staff can clear the parking lot, management may end up needing to consider a reasonable accommodation request from a person with a disability who requests management to do this. Assuming the person's disability is obvious (and if not, verified) and the need for the accommodation is obvious (or verified) management will need to determine if the request is reasonable: If it doesn't pose an undue financial and administrative burden (which it won't) or if it is a fundamental change in the program (which it might be). HUD hasn't provided guidance on this matter.

Regardless of who is responsible for snow removal in the parking lot, it is the site's responsibility to make sure that it is done in a manner that doesn't push the snow into the Handicapped Parking spots and/or block the curb cuts.

9. Are There Fair Housing Related Rules That I Have To Follow Regarding How I Do An Emergency Evacuation Plan?

Yes. First, any owner or manager is responsible for keeping all emergency alarms working properly and all exits marked and clear of items that might block passage. This includes proper flashing alarm systems and regular checking to ensure that items stacked near exits would not impede a person with visual impairments, walkers or wheelchairs. Snow and ice at emergency exits must be removed as soon as possible.

HUD recipients must also have emergency evacuation plans for each building. HUD Guidance states that when housing providers are updating this plan, residents should be given the opportunity to decide whether they want the

housing provider to provide information regarding special evacuation needs to the fire and police departments. The guidance further states that the housing provider may share this information with the fire and police departments if consent is given.¹⁵

It is recommended that you discuss the evacuation plan at move-in and at re-certification. You may also have all applicants and residents sign a statement acknowledging discussion of any special evacuation needs, but you can't single out people with disabilities for such discussion.

For liability reasons, it is a good business practice for any property owner to do the kind of evacuation planning outlined above. Of course it is key to follow your updating schedule so the plan does not become out of date.

10. Are There Fair Housing Related Rules That I Have To Follow Regarding Pets and Assistance Animals?

Yes. If your site permits residents to have pets you must be consistent in how you apply the rules regarding pets to avoid a fair housing complaint, including what types of pets are/aren't allowed, whether a pet deposit is required (which it can't be in MA), and application of rules. If your site is a HUD elderly site, you are required to allow common household pets and must create reasonable pet rules that comply with the requirements contained in the 4350.3 rev-1 at par. 6-10, http://www.hud.gov/offices/adm/hudclips/handbooks/hsgq/4350.3/43503c6_HSGH.pdf and see HUD's mandatory and Discretionary Pet Rules, contained in Exhibit 6-4 at:

¹⁵ Section 504 Frequently asked questions updated July 5, 2001 (Hereinafter referred to as 504 Questions), <http://www.hud.gov/offices/fheo/disabilities/sect504faq.cfm>. Guidance on this subject can also be found from the U.S. Equal Employment Opportunity Commission. This government entity, which is responsible for enforcing prohibitions of employment discrimination against people with disabilities, posted on its web site questions and answers to assist employers on employee emergency evacuation plans. However, this guidance indicates that it is permissible for an employer to ask employees with obvious disabilities if they need assistance, whether the employer periodically surveys all of her employees or not. HUD's guidance on this topic doesn't indicate that this would be acceptable in the housing context. Other resources are "Employer Planning for Worker Safety," New England ADA and Accessible IT Center/Fall 2001, and "Fast Evacuation of Twin Towers Attributed to Plans," ADA Compliance Guide, January 2002, pages 5-6.

<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e6-4HSGH.pdf>.

Assistance animals are not pets. They are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals providing emotional support are commonly called companion animals or therapeutic animals. Animals do not necessarily have to be formally trained to qualify as assistance animals; however the animal must actually perform the assistance or provide the benefit needed by the person with the disability. Reasonable accommodation requires that there is a relationship between the person's disability and his or her need for the animal. If the person's disability isn't obvious, management has the right to verify that the resident has a disability. If the person's disability isn't obvious management has the right to verify that the person has a disability (not the nature or the severity). If the need for the assistance animal isn't obvious, management has the right to request information necessary to establish the nexus (relationship) between the person's disability and the need for the requested accommodation. If such information isn't obvious, verification of the need for reasonable accommodation for an assistance animal must be provided by a licensed physician, attending health care professional, or other qualified professional. Assistance animals that are needed as a reasonable accommodation for persons with disabilities are not considered pets, and thus, are not subject to certain portions of a Pet Policy. For more information see the 4350.3 REV-1, par. 2-44 at <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503c2HSGH.pdf>

All provisions of the Lease and Pet Policy/Agreement regarding the responsibilities of pet owners to control the animals, maintain the premises in clean and sanitary condition, meet local licensing, leash law and other requirements and ensure that neighbors enjoy the premises in a safe and peaceful manner that apply to all residents apply to assistance animals as well. You may not require a pet deposit because it isn't a pet (even if state law permitted a pet deposit) and you may not charge the resident "additional rent."

11. Do I Have to Allow Anyone Who Brings a Doctor's Letter or a Professional's Letter to Have a Companion Animal?

NO. If a person does not have a disability, you are not obligated to accommodate his/her needs. You must allow the companion animal if the person provides documentation that he/she has a physical or psychiatric disability that substantially limits a major life activity and that because of that, a companion animal is necessary to enable the person equally to enjoy his/her apartment. If the disability and/or need is not obvious or known to you and you are not provided with documentation of the disability and/or the need for the accommodation, you do not need to permit the companion animal. The companion animal must be kept in a manner that does not result in a violation of health and safety standards, local licensing, leash law and other requirements or cause undue property damage. Because the animal is a reasonable accommodation, you may not require a pet deposit, increase the security deposit or charge additional rent.

Also, federal and state-funded public and assisted housing for the elderly and disabled must permit residents to have common household pets as long as tenants comply with reasonable pet policies, such as the animal being up to date on its vaccinations.

12. Must I Allow Visitors with Service Animals or Companion Animals to Bring Them onto the Premises and Into the Building?

Yes. You may require that the animal be leashed and behave in a manner that doesn't interfere with anyone's quiet enjoyment or cause damage to the property.

G. QUESTIONS REGARDING FAMILIES WITH CHILDREN

1. Can My Site Exclude Families With Children?

A property can exclude families with children without illegally discriminating if it is designated for older people and falls under one of three narrow exemptions contained in the Federal Fair Housing Act.

The three exemptions within the FHA's "Housing for Older Persons" exemption are:

State and Federal Elderly Housing Program - If the Secretary of HUD makes a determination that a federal or state housing program is designed and operated for occupancy by the elderly;

55 or Over Housing - Housing intended and operated for households comprised of at least one person 55 years of age or older. For a property to qualify at least 80% of the units must be comprised of such households; and

62 or Over Housing - Housing intended for, and occupied solely by, people 62 and over.

Even though HUD could grant a site permission to exclude children under exemption (a), it has stated that a HUD financed Elderly site can't exclude an otherwise eligible household just because the family has a child. To be eligible for housing at an elderly HUD site only the head, co-head or spouse must be 62 years of age or older. No other household member has to be elderly. Therefore, if a 62 year old applied to a HUD subsidized site with his/her 12-year-old grandchild the site couldn't refuse to rent to the household because of the child.

If you want to fully understand exceptions (b) and (c) above, see 24 CFR 100.303 and 100.304; and the Housing for Older Persons Act of 1995 (42 USC Section 3607), which contains requirements for this type of housing that were originally contained in the FHA, but later removed.

2. Can My Site Exclude A Family Based On The Number Of People In The Family Without Violating Fair Housing Law?

Please see the discussion on Occupancy Standards and Discrimination beginning on page 40 for an answer to this question.

3. If I Work At A Site That In My Opinion Isn't The Best For Kids To Live In And Someone Asks My Opinion Should I Tell Them What I Think?

Decisions about whether to live in a development that has virtually no children, or a high rise building, or not near any playing facilities, or if it has lead based paint in the units or common areas, is for the family to make, not the housing provider, or staff. A housing provider or staff person may not mislead or discourage a family from living in the development because he/she doesn't think it would be in the family's best interest to live in the development. This is called steering. You need to talk to the site manager about exactly how he/she would like you to respond to this question. There are a number of legal but friendly ways to answer questions about whether there are children at a site, if children are welcome at the site, if it's a good place for families, etc. These include:

"Everyone is welcome at the site."

"This is a great place for anyone to live. If you have specific questions you should talk to the manager. Let me show you where his/her office is."

"I'd love to help you, but I'm probably not the best person to answer your question. I'd be happy to get that person for you."

4. Can My Site Exclude Families Because It Has Lead Paint?

No. A site can't refuse to rent to a family (or evict a family) because it doesn't want to deal with lead paint abatement or because management is afraid the lead paint poses a danger to children. State and Federal law requires management to provide specific notification to residents regarding lead paint at the site, and stipulates when lead paint abatement is required. Parents also can't waive the rights of their children to live in lead-safe housing or agree to assume the risks of lead exposure.

Owners and site staff of developments built prior to 1978 where children under the age of six live really need to be aware of their notification and abatement obligations. They also need to be aware of recent changes in the law.

In March of 2008, the Environmental Protection Agency issued a rule suggesting practices contractors should follow that focus on containing the work area,

minimizing dust, and cleaning up thoroughly. The rule also contains other parts aimed at preventing lead poisoning. Beginning December 22, 2008 contractors must provide a pamphlet, Renovate Right: Important Lead Hard Information for Families, Child Care Providers, and Schools, to owners, and parents and guardians of children under age six that live in housing built before 1978 that is undergoing renovation, repair and painting that will disturb the lead paint. This pamphlet will replace the pamphlet Lead: Protect Your Family.

Also, beginning in April 2010 anyone working on a renovation, repair, or painting project that disturbs lead-based paint in homes built before 1978 must be certified by the EPA and must follow specific work practices to prevent lead contamination that are currently recommended.

5. Can My Site Limit Where Children Play, How Loud They Are, And Whether They Have Access To The Community Room?

Usually rules relating to children come in three forms: 1) rules that say children or children under a certain age aren't allowed; 2) rules that allow children only with adult supervision; and 3) rules that allow children to use facilities only during certain hours. For example, it may be reasonable to prohibit children under the age of 16 from using a pool without adult supervision. Regardless of what type of restriction it is, site staff may only impose restrictions on the use of facilities by children at a property if the limitation is really necessary (i.e. relates directly to the health and safety of children) and the rule achieves the purpose in the least restrictive (most reasonable) manner possible. For example, it is not reasonable to prohibit all children from using a pool, or from restricting children from using the pool at certain hours. It may be more reasonable to require adult (not parent) supervision, but it may be more reasonable to tie the use of the pool to the ability to swim or proficiency rather than adult supervision. Likewise, before a site imposes an age restriction, you need to make sure that you can't address the concern by focusing on behavior rather than age. For example, if you are concerned about rough housing in the parking lot you cannot post signs that say "no children may play in the parking lot." You can say, "No playing in the parking lot." Also, remember that you can't put "hour restrictions" on community space because adults or elders don't want to be around children. By doing this, you are arguably allowing and helping one group to discriminate against another.

Likewise, there are often signs that say, “no children are allowed in this area.” Such signs are illegal. You can redress concerns about loitering by posting a sign that addresses the behavior generically: “No loitering allowed.”

a) Reasonable Rules Include:

Prohibiting games in the parking lot;

Prohibiting games in an area of the development where it is likely to cause property damage (baseball, football, soccer...).

Noise restrictions that relate to the interference of other residents’ quiet enjoyment but hold everyone to the same standard.

Community spaces which are closed to everyone at certain hours, not just closed to a certain age group.

b) Rules That Are Suspect:

Any rule that limits a child's activities or access to recreational facilities.

Any rule which restricts on the basis of age.

Prohibiting all games (including hopscotch, jump rope, jacks...)

Rules that require “parent” supervision vs. adult supervision.

Curfews for children.

c) Easy Ways To Get Into Trouble

Enforcing “unwritten rules.”

Enforcing rules inconsistently.

Being responsible for unenforceable or unreasonable rules.

Talking to children and/or parents/guardians in a manner that contains illegal or discriminatory language. For example, it’s never a good idea to start a conversation with “You people.....” Rather, focus on the behavior and whether it violates the lease.

H. QUESTIONS REGARDING RESIDENTS WITH DISABILITIES

1. If My Site Is Elderly, How Come There Are So Many Younger People With Disabilities Living Here?

Sites funded with Federal or State money have specific eligibility criteria, including who the site is designed to serve. If your site is “Elderly” the program that funded it stipulated that the site is required to serve the “Elderly”. The confusing part is that different programs use different definitions of elderly, and sometimes one program can use more than one definition. Often times, the definition of Elderly includes “younger people with disabilities.” There are both Federal and State laws that stipulate when and if a housing provider can limit the percentage of younger people with disabilities in Elderly housing. If you want to understand more about the varying definitions of Elderly and Disability you should read Chapter 3 in HUD Handbook 4350.3 REV-1, http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503c3_HSGH.pdf Please review **Figure 3-5: Applicable Definitions for Elderly and Disability - Determining Project Eligibility Summary**, and **Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility** for more detail.

If you are involved in the application process, it is necessary that you fully understand who is eligible to live at your site. Your site’s Tenant Selection Plan/Resident Selection Plan must contain your site’s eligibility criteria, as well as the suitability criteria.

It is crucial that you and all staff that will be answering questions at the site be able to provide answers to basic questions about your site’s eligibility and suitability standards. Staff who will not be providing such information need to be provided with a standard response to people who stop you at the site and ask questions about eligibility, the application process, and vacancies. Such staff need to have a standard response, which could be to simply direct the person asking the question to a specific person or persons at the management office. Having a standard response to questions regarding eligibility that directs people to the management office will protect you against charges of steering and other

forms of discrimination. For example, a staff person could say “I want to make sure you’re provided accurate information about the application process. You should speak with _____. The office hours are_____ ……” Each site needs to decide whether staff who are asked such questions when they are on the grounds of the site will accompany the person to the office or simply direct the person how to get to the office. Remember, consistency is crucial.

2. What Is The Definition Of A Person With A Disability?

There are a lot of different definitions of the term “disability.” For example, there is a definition of disability for the purpose of getting into public and assisted housing and a different one for the purpose of discrimination. The definition of disability for the purpose of being eligible to get into public or assisted housing is very different than the definition used in discrimination law. It is much harder for a person to qualify as a person with a disability for the purpose of getting public or assisted housing than it is to meet the definition of disability used for discrimination purposes. People who meet the definition of a person with a disability for eligibility purposes will satisfy the civil rights definition of a person with a disability. However, a person who meets the civil rights definition of a person with a disability won’t necessarily meet the definition of a person with a disability for the purpose of eligibility.

All of the federal and state laws discussed that prohibit discrimination against people with disabilities which apply to our sites define a “handicapped person” or a “ person with a disability” essentially the same way. A person who:

Has a physical or mental impairment that substantially limits one or more major life activities;

Has a record of such an impairment; or Is regarded as having such an impairment

The physical or mental impairment can include practically any condition, disease, illness, disfigurement, and syndrome or disorder (e.g. alcoholism, AIDS, emotional disorder, cerebral palsy, cancer, deafness, HIV infection).

Major life activity includes, but isn't limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, learning and working.

3. Does The Civil Rights Definition Of Disability Include People With Alcoholism And People Who Do Illegal Drugs?

Fair housing laws treat people with alcoholism, people who currently use illegal drugs and people who have a history of illegal drugs differently.

People With Alcoholism

People who have alcoholism are considered to have a disability for the purpose of protection against discrimination. This means you can't discriminate against someone because he/she has alcoholism; it **doesn't** mean management can't treat a resident's bad behavior as a lease violation even if it's directly related to his/her alcoholism. The key is to focus on the resident's behavior, rather than the person's disability. If you witness a person being disruptive, violent, or engaging in dangerous incident, focus solely on the facts (what you see, hear, and smell), rather than your assumptions, opinions or conclusions. For example, assume a resident smells of alcohol, is slurring his words, swaying from side to side, banging into walls, screaming at other residents because they don't want to drink a beer with them in the lobby. You can't ignore the resident's behavior and you need to take action because the resident is violating his lease. Note, however, that action to stop the immediate behavior is necessary when the person is drunk and behaving in ways that disturbs or threatens others. Calling the police may be appropriate. Discussing the lease enforcement situation with the person must wait until he or she is sober.) When you address the incident with the resident, you want to focus on the lease violating behavior. It would be inappropriate to state that the resident is an alcoholic and that he needs to go into a substance abuse program; however, if the resident says he or she is an alcoholic in defense of the behavior, the manager or RSC could explain reasonable accommodation.

Likewise, assume you enter unit 207 when conducting a standard maintenance check and there are numerous beer cans strewn all over the living room and cigarette burns and ashes all over the carpet. You can't ignore what you see; you need to report the condition of the unit to the manager. However, it would be

inappropriate for you to say the following: “The resident in unit 207 has a drinking problem. There were bottles everywhere and when he drinks he smokes. That guy is going to burn the unit down one of these days.” These statements are based on opinion and draw conclusions. It is much safer from a legal standpoint only to relay/document the facts. It is up to management to then take action based on the lease violating behavior.

Illegal Drug Users and People Who Have A History of Illegal Drug Use

The law treats people who currently illegally use a controlled substance differently than people who have a history of illegal drug use. Federal Fair Housing laws explicitly exclude individuals who currently illegally use controlled substances from the definition of a person with a disability. In addition, the state Fair Housing Act does not explicitly exclude from protection individuals who currently use illegal drugs. However, the Massachusetts Commission Against Discrimination (MCAD) decided, in a case involving employment discrimination, that current illegal drug use is not a disability under state law. The issue has not come up in a housing case. However, it is reasonable to assume that the MCAD would reach the same conclusion if it did.

A person with a history of illegal drug use is protected provided she is not currently illegally using a controlled substance and successfully completed rehab, or is participating in a rehab or self-help program. The standard for current illegal drug use is not clear. The standard suggested in the Americans with Disabilities Act is whether a reasonable person would believe a person is still using. The legislative history of this law suggests that if a person were illegally using as recently as “last week or last month” she would not be protected. Case law indicates that if someone was clean from illegal drug use for at least one year that she is not a “current” user and is protected.

4. Are People With Disabilities Required To Disclose They Have A Disability To A Housing Provider?

No, unless it is included in the criteria for eligibility or the person is trying to qualify for a specific deduction against income, or has requested a reasonable accommodation or modification. Remember, how you treat someone can't be

based on disability status. Therefore, you have no need to know unless it is for one of the reasons mentioned.

5. Do I Have The Right To Know If Someone Has A Communicable Disease, And If Not, Why Isn't Someone Protecting My Rights?

People who have communicable diseases are under no obligation to disclose them to you or anyone who works at the site.

No one at the site has the right to know the nature or severity of a resident's disability, unless it is an eligibility requirement for a specific housing program. If a housing manager does know a resident has a communicable disease there is no basis in the law for him/her to disclose it to staff. Fair Housing laws take seriously the importance of maintaining confidential information related to people's disability. There are narrow exceptions to the disclosure of confidential information regarding a person's disability, but they are unrelated to how you perform your job.

Although it may be hard not to feel that the resident's confidentiality is being given greater attention than site staff's "safety" there is a practical solution that meets both needs: use universal health precautions. Taking universal precautions means that situations where you site staff **could** come into contact with blood and certain body fluids should be treated as if they are known to contain HIV, Hepatitis B, Hepatitis C or other blood borne infections. Doing this is essential because even if you were told the names of everyone who has a communicable disease, there are many people who have them and don't know they do.

6. Do Non-Discrimination Laws Protect People With Disabilities Even If They Are Bad Tenants?

The answer is both yes and no. The Federal Laws discussed in this guide utilize exclusions that do not specifically apply to individuals with any one disability, but rather clarify that a person with a disability must meet a housing provider's eligibility and suitability standards for admission to housing, and continue to

comply with the terms of the lease. In other words, the law requires owners to focus on the person's behavior, rather than their protected class.

A housing provider may exclude a person with a disability when:

The person's tenancy poses a direct threat to others;

The individual's tenancy would result in "substantial physical damage to the property of others"; or

If the individual is not otherwise qualified for housing.

A determination of whether someone's tenancy poses a "direct threat," or would result in substantial damage to the property of others or if she is "otherwise qualified" must be based on objective factors and made in the context of whether a reasonable accommodation will permit the individual to realize the benefits of the housing program, including meeting the terms of the lease. The Massachusetts law does not include any language that exempts people whose tenancy would constitute a direct threat to other individuals or to property. However, it is unlikely that a court would interpret the state law as not allowing the exclusion of those who pose a threat.

What this means is that you shouldn't ignore bad tenancy related behavior just because someone has a disability, or hold someone to a lesser standard of lease compliance because he/she has a disability. However, if the negative behavior is a direct result of the person's disability (not simply because the person is a jerk) and a change in a rule, policy or procedure or physical change will solve the problem and the solution is reasonable, you provide the change.

For example, a site cannot refuse occupancy to a person because his wheelchair may damage the baseboards. However, a site can refuse this person occupancy if references and verifications establish that the person caused significant damage (well beyond normal wear and tear) to his previous unit and common areas through the use of his wheelchair. If this person establishes that the damage to the unit is a result of his disability and a reasonable accommodation or physical modification would solve the problem (such as reinforced

baseboards) the housing provider would be required to make the accommodation/modification, provided doing so didn't impose an undue financial and administrative burden (it wouldn't pose a fundamental change in the program). However, if no nexus exists between the disability and the bad behavior (i.e. the person is intentionally destroying the walls) the site isn't obligated to and shouldn't ignore the negative tenancy related behavior.

7. What Is Reasonable Accommodation And Reasonable Modification?

The concept of reasonable accommodation/modification is central to every federal and state law that prohibits discrimination against people with disabilities. The term reasonable accommodation generally refers to making a change in a rule, policy or procedure. The term reasonable modification generally indicates a structural/physical change. Sometimes these terms are used interchangeably. The concept of making changes to provide access for people with disabilities applies throughout the occupancy cycle (admission, occupancy and eviction). The purpose of this requirement is to provide people with disabilities an equal opportunity to use and enjoy their housing. Check with your company regarding its reasonable accommodation/modification policy.

APPENDIX

Appendix 1

Important Federal and State Statutes That Prohibit Discrimination in Rental Housing, Types of Housing Covered & Who Is Protected

Applicable Federal Housing
Discrimination Laws & How They Are
Implemented

Types of Rental Housing
Covered

Who is Protected

Fair Housing Act - (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act in 1988) (FHA)

1) Rental housing unless it is owner occupied with no more than 4 units;

The Federal Fair Housing Act states housing providers can't discriminate in housing against applicants or residents on the basis of any of the following:

It is implemented through the Department of Housing and Urban Development's regulations. These can be found in 24 CFR, Subchapter A, Subparts A through F, part 100.

If the rental housing is owner occupied and four units or less the owner must still adhere to prohibitions against discriminatory advertising;

- RACE**
- COLOR**
- RELIGION**
- SEX**
- NATIONAL ORIGIN**

The HUD Occupancy Handbook for Multi-family Programs, 4350.3 REV-1, covers Fair Housing Requirements in Chapter 2 and elsewhere in the Handbook.

HUD and the DOJ published a joint statement titled, Reasonable Accommodations Under the Fair Housing Act, May 17, 2004.

HUD and the DOJ published a joint statement titled, Reasonable Modifications Under the Fair Housing Act, March 5, 2008.

Anyone (including an owner who resides in a building of four or less units) engaged in three or more rental transactions in the last twelve months must abide by fair housing laws;

The rental of single-family homes is exempt unless #3 exists or a broker or agent is in any way involved in the transaction.

HANDICAP FAMILIAL STATUS

Housing providers also can't discriminate against applicants and residents because of their guest's or associate's protected status.

**Applicable Federal Housing
Discrimination Laws & How They Are
Implemented**

**Types of Rental Housing
Covered**

Who is Protected

***Title VI of the Civil Rights Act of 1964-
Title VI***

HUD has developed regulations that apply to housing programs that it finances. These regulations are at 24 CFR Part 1 et.

The Department of Justice issued a policy guidance document designed to clarify recipients existing Title VI obligations and provide general principles for agencies to apply in developing guidelines for services to individuals with limited English proficiency. The document is titled “Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons With Limited English Proficiency.” See Fed. Reg.Vol. 65, No.159,

If the property receives federal financial assistance. Owners that accept mobile vouchers and whose sites are financed with tax credits are not considered recipients of federal financial assistance.

Title VI says housing providers that receive federal dollars can’t discriminate in housing against applicants or residents on the basis of any of the following:

**RACE
COLOR
NATIONAL ORIGIN**

Wed., August 16, 2000.

HUD followed up by issuing final guidance.
See Notice of Guidance to Federal
Assistance Recipients Regarding Title VI
Prohibition Against National Origin
Discrimination Affecting Limited English
Proficient Persons, See Fed. Reg. Vol. 72,
No.13, Monday, January 22, 2007.

**Applicable Federal Housing Discrimination
Laws & How They Are Implemented**

**Types of Rental Housing
Covered**

Who is Protected

Age Discrimination Act

HUD has developed regulations that apply to housing programs that it finances. These regulations are at 24 CFR Part 146.

If the property receives federal financial assistance

The Age Discrimination Act says housing providers that receive federal dollars can't discriminate in housing against applicants or residents on the basis of **Age**.

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***Section 504 of the Rehabilitation Act of
1973 (504)***

Each federal agency that provides funding for a program or activity was supposed to develop regulations. Those regulations apply to programs and organizations receiving financial assistance from that particular agency. If an entity receives federal financial assistance from more than one federal agency it must follow each agency's regulations.

HUD has developed regulations that apply to housing programs that it finances. These regulations are at 24 CFR Part 8 et.al. Rural Housing also has a set of regulations for housing programs it finances. These are at **7 C.F.R. §§ 15b.1 - 15b.42**

If the property receives federal financial assistance.

A list of HUD-funded programs subject to the §504 requirements can be found in Appendix A to HUD's §504 regulations. Being financed with tax-credits doesn't make a site a recipient of federal financial assistance for the purpose of this law. An owner's acceptance of a voucher doesn't make him a recipient of federal

Section 504 says housing providers that receive federal dollars can't discriminate in housing against applicants or residents on the basis of **HANDICAP**

HUD has issued a number of notices to remind recipients of their obligations under federal law. financial assistance for the purpose of this law.

Title II of the Americans with Disabilities Act- 1990 (ADA)

Title II's regulations can be found at 28 CFR Part 35 et. al.

Housing that is owned or operated by a state or local government entity or, in accordance with case law, substantially financed by a state or local government entity. See, *Independent Housing Source v. Filmore Center*. 2AD Cases 1674(N.Dis.Cal.1994).

DISABILITY

**Applicable Federal Housing Discrimination
Laws & How They Are Implemented**

**Types of Rental Housing
Covered**

Who is Protected

***Title III of the Americans with Disabilities
Act- 1990 (ADA)***

Title III's regulations can be found at 28 CFR
Part 36 et. al.

This law doesn't cover
"housing," but rather
privately owned public
accommodations (such as
the rental office) and
commercial facilities in a
housing development.

DISABILITY

**Applicable State Housing Discrimination
Laws & How They Are Implemented**

M.G.L. c. 151B (Massachusetts)

The MA Commission Against Discrimination enforces this statute (including publishing regulations contained in 804 C.M.R. 02.00) and also has a contract with HUD to assist in the enforcement of other laws. See

<http://www.mass.gov/mcad/>

**Types of Rental Housing
Covered**

All housing except owner-occupied two-family housing

Who is Protected

M.G.L. c. 151B says covered housing providers can't discriminate in housing against applicants or residents on the basis of any of the following: race, religious creed, color, national origin, sex, sexual orientation (which shall not include persons whose sexual orientation involves minor children as the sex object) age, genetic information, ancestry, or marital status of such person or persons or because such person is a veteran or member of the armed forces, or because such person is blind, or hearing impaired or has any other handicap or because they receive public assistance.

**Additional Major Requirements
Contained In Section 504
Which Applies To All Sites That Receive Federal Dollars¹⁶**

Requirements	Section 504
Program Access/ Existing Property	The Program as a whole, when viewed in its entirety, must be readily accessible to and usable by people with disabilities. 24 CFR 8.21-8.22 and 4350.3 REV-1, beginning p. 2-19, par. 2-25.
Self Evaluation	All recipients are required to complete an evaluation of their rules, policies and procedures to determine if they discriminate against people with disabilities and to remedy those that do. This obligation was met and the site must review its policies on an ongoing basis to make sure that any new policies don't discriminate or have the effect of discriminating. 24 CFR 8.51, 4350.3 REV-1, p. 2-31-2-33, par. 2-34.

¹⁶ There are other requirements under Title II (if state funding or financing is involve) and under Title III, in regards to the Public Accommodation portion of sites.

<p>Transition Plan</p>	<p>All recipients are required to determine if physical barriers exist, and if structural modifications are required to achieve program accessibility recipients must complete a transition plan. Structural changes necessary to provide access should have been completed. 24 CFR 8.24(d) and 4350.3 REV-1, beginning on p. 2-32, par. 2-34 E.</p>
<p>Coordinator</p>	<p>Recipients with 15 or more employees must appoint someone to coordinate their efforts to comply with 504. 24 CFR 8.53, and 4350.3 REV-1, p. 2-23, par. 2-28.</p>
<p>New Construction Note: The FHA does have minimum access requirements for new construction that must be satisfied in addition to the requirements of 504. . See 24 CFR 200.205 and the Fair Housing Act Accessibility Guidelines. State law applies as well.</p>	<p>All Newly structured buildings must be accessible. A minimum of 5% of the total dwelling units or at least 1, whichever is greater, must be accessible for people with mobility impairments and 2% must be accessible for people with vision or hearing impairments. 24 CFR 8.22 and 4350.3 REV-1, beginning p. 2-33, par. 2-35.</p> <p>The Uniform Federal Accessibility Standards (UFAS) or a standard that provides equal or greater access must be used.</p>
<p>Making Alterations to a Property Don't forget to check state law</p>	<p>Section 504 has two categories of alterations:</p>

<p>as well.</p>	<p>Substantial Alterations- (property must have 15 or more units, and the cost of the alteration must be at least 75% of the replacement cost of the completed property. The new construction standards apply.</p> <p>Other Alterations-To the maximum extent possible must be accessible until at least 5% of the units are accessible for persons with mobility and 2% are accessible for persons with visual impairments unless HUD has prescribed a higher number. When the owner isn't altering the entire unit, 100% of single elements being altered must be made accessible until 5% of the units are accessible.</p> <p>See 24 CFR 8.23 and 4350.3 REV-1, beginning p. 2-33, par. 2-35.</p> <p>See above for design standard.</p>
<p>Auxiliary Aids/Methods of Communication</p>	<p>A recipient is required to furnish auxiliary aids (such as visual alarms, tactile signs, visual doorbell reader, interpreter, communications in large print or Braille or tape, and a television in a public area that provides closed-caption service) if necessary to afford a person with a disability an equal opportunity unless it would result in an undue financial and administrative burden or fundamental alteration.</p>

	<p>A recipient doesn't have to furnish personal devices.</p> <p>In determining what auxiliary aid to use, primary consideration must be given to the request of the person with the disability.</p> <p>See 24 CFR 8.6 and 4350.3 REV-1, par. 2-29, beginning on p. 2-23.</p> <p>NOTE: "HUD encourages owners to provide auxiliary aids as necessary, as a routine property expense. HUD assumes that requests for auxiliary aides will not normally result in undue financial and administrative burden." See 4350.3 REV-1, page 2-19, Par. 2-25 A.2.</p>
<p>Grievance procedure</p>	<p>A recipient with 15 or more employees must establish a grievance procedure that can be used by tenants and employees. 24 CFR 8.53.</p>



Massachusetts Housing Finance Agency
One Beacon Street, Boston, MA 02108

TEL: 617.854.1000 | FAX: 617.854.1028
VP: 866.758.1435 | www.masshousing.com