

10 TAC Chapter 10, Subchapter G, §10.801 Affirmative Marketing Requirements

§10.801 Affirmative Marketing Requirements

(a) Applicability. Compliance with this section is required for all federally or state- funded Developments with five or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968, and Executive Order 13166. This section does not apply to the Tax Exempt Bond Program or Low Income Housing Tax Credit Program, with the following exceptions:

(1) To the extent required under the LURA;

(2) For affirmatively marketing to Persons with Disabilities; and

(3) To the extent that federal funds are in a Development's financing sources or provide operating assistance.

(b) General. A Development ~~Owner~~ with five or more total Units must affirmatively market the Units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or Affirmative Marketing Plan) to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." To determine the "least likely to apply" populations, a Development Owner is encouraged to use ~~Worksheet 1 of HUD Form 935.2A~~ the TDHCA provided tool and simplified form, but at a minimum the Owner must ~~document that they have compared the demographic composition of the Development to the market area to determine the populations least likely to apply~~ document the method or methods used to determine which populations are least likely to apply. All Affirmative Marketing Plans must provide for affirmative marketing to Persons with Disabilities. Although not related to Affirmative Marketing requirements in this section, some Developments may be required by their LURAs to market units specifically to veterans or other populations as part of their regular marketing activities. If a Development has included veterans in the Development's Affirmative Marketing Plan it will not be cited as noncompliance the first time the Development's Affirmative Marketing Plan is reviewed, but the Development will be directed to revise the Affirmative Marketing Plan to not include this subpopulation in the plan.

(c) Plan format. A Development Owner must prepare, have in its onsite records, and submit to the Department upon request, a written Affirmative Marketing Plan. Owners are encouraged to use the simplified form provided by TDHCA on its website. any version of HUD Form 935.2A to meet Affirmative Marketing requirements. An Owner participating in a HUD funded program administered by the Department must use the version utilized by the program.

(d) Marketing and Outreach.

(1) The plan must ~~identify~~include the special outreach efforts to the "least likely to apply" populations through specific media, organizations, or community contacts that work with least likely to apply populations or work in areas where least likely to apply populations live. The outreach efforts identified in the Affirmative Marketing Plan must be performed by the Development at least once per calendar year.

(2) To the extent that advertisements and/or marketing materials are utilized for the Development, those materials must contain:

(A) The Fair Housing logo;

(B) The contact information for the individual who can assist if reasonable accommodations are needed in order to complete the application process; and

(C) Property contact information must be provided in both English and Spanish, ~~and may be required to be provided in other languages in accordance with Limited English Proficiency Requirements.~~

(e) Timeframes.

(1) An Owner must begin its affirmative marketing efforts for each of the identified populations least likely to apply at least six months prior to the anticipated date the first building is to be available for occupancy.

(2) Once every five years, Owners must determine if there have been any changes to the "least likely to apply" populations by ~~completing Worksheet 1 of HUD Form 935.2A~~ utilizing the TDHCA provided tool or a written process with equivalent information. In addition, owners must determine if current advertising sources still exist, and if the outreach that has been performed is still the most applicable. If the Owner determines that the plan does not need to be updated, the backup used to ~~complete Worksheet 1 or its equivalent~~ make this determination must be dated and maintained and may be reviewed by Department staff during reviews of the Affirmative Marketing Plan. If there have been changes to the least likely to apply populations or if the community contacts and advertising outlets no longer exist, the plan must be updated. ~~Developments funded by HUD or USDA must also update their plans in accordance with HUD or USDA requirements that apply.~~

(f) Recordkeeping. Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.

(g) Exception to Affirmative Marketing. If the Development has closed its waitlist, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open waitlist, or is marketing prior to the building being ready for occupancy as required under subsection (e)(1) of this section.