

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

Special Attention of: Notice: FHEO 97-2

All State Representatives Issued: August 6, 1997
All State Coordinators
All Program Operations and Compliance Center Directors Expires: August 31, 1998
All Multifamily Housing Directors Cross References:
All Housing Directors

Subject: Fiscal Year 1997 Guidance for FHEO Review of
Applications for Section 202 and Section 811 -
Supportive-Housing for the Elderly and Persons with
Disabilities Programs

PURPOSE

This Notice provides detailed guidance to Fair Housing and Equal Opportunity (FHEO) staff for their review and analysis of applications for the Section 202 and Section 811-Supportive Housing for the Elderly and Persons With Disabilities Programs. In accordance with the Department's reinvention efforts and with the consolidation of the regulations for both programs because of their similarities, this guidance was revised also to consolidate the two previously separate FHEO Guidances for the Section 811 and the Section 202 Programs. It discusses and clarifies FHEO's responsibilities for both the Section 811 and Section 202 Programs. As such, FHEO staff shall consult the appropriate Handbook, NOFA, and regulations for each program's requirements. Knowledge of overall program requirements is especially important for FHEO staff to carry out their responsibilities. This Notice highlights only program changes that affect FHEO, and is intended as a companion document to:

- HUD regulations 24 CFR Part 891 (Final Rule). In 1996, the Department consolidated and streamlined into one set of regulations, many parts of the Section 202 and Section 811 regulations that were similar in substance. 24 CFR Parts 885, 889, and 890 have been deleted and replaced with a new Part 891.
- Fiscal Year 1997 Notice of Fund Availability (NOFA) (FR Vol. 62, No. 101 May 27, 1997), Supportive Housing For Persons With Disabilities.

EPSS: Distribution: W-3-1, W-2 (FHEO) , R-1 , R-2

- Fiscal Year 1997 Notice of Fund Availability (NOFA) (FR Vol. 62, No. 101 / May 27, 1.997), Supportive Housing For the Elderly.
- HUD Handbook for the Section 811 program (HUD 4571.2 REV-1) Supportive Housing for Persons With Disabilities.
- HUD Handbook for the Section 202 program (HUD 4571.3

REV-1), Supportive Housing for the Elderly.

- Notice H-97-13 - This Notice is effective from 5/14/97 to 5/31/98. It consolidates and updates instructions for the application processing and selection program requirements of the Sec. 202 Program.
- Notice H-97-30 - This Notice is effective from 5/23/97 to 5/23/98. It consolidates and updates instructions for the application processing and selection program requirements of the Sec. 811 Program.

FHEO field staff may obtain copies of documents listed above from the Office of Counsel, the Office of Housing, or by contacting their Program Coordinator.

REVISIONS TO FHEO REVIEW PROCEDURES

FISCAL YEAR 1997 CHANGES:

1. Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority elderly and minority persons with disabilities.

Former Secretary Cisneros, in his December 16, 1996 memorandum, directed the Department to include a selection factor addressing affirmatively furthering fair housing in NOFAs. The application submission requirement responding to this criterion has been broadened to include a narrative description of how the Sponsor will use the site to affirmatively further fair housing opportunities for minority elderly persons and minority persons with disabilities.

2. Change in definition of minority sponsor.

In conformance with 60 FR 46159, September 5, 1995, Section 2452.226-70, Hasidic Jew has been deleted from the definition of minority sponsor.

2

3. FHEO Selection Criteria included in NOFA and Housing Notice.

The range of points (0 to 10) for each of FHEO's two rated factors is included in the NOFA and the Housing Notice for the Section 202 Program and the Section 811 Program.

FISCAL YEAR 1996 CHANGES REMAIN IN EFFECT:

1. Review of Applications

FHEO does a complete analysis of applications including the review for compliance with equal opportunity laws and the Department's Site and Neighborhood Standards (formerly

FHEO's Threshold Review).

FHEO provisions in the regulations:

- 891.125 - Site & Neighborhood Standards (S&N) applicable to both programs' requirements.
- 891.155 - Other Federal Requirements; civil rights related program requirements are cross-referenced to 24 CFR Part 5.

Note that for the Sec. 811 Program, the S&N Standards have been relaxed to allow the jurisdiction more flexibility in the placement of Sec. 811 projects. Language has been changed from "must" to "should" to remove restrictions on the consideration of sites adjacent to, or in areas where specifically designed facilities or housing to serve persons with disabilities already exist. FHEO review of this factor is not required.

2. Revised List of Exhibits for FHEO's Review

The Department has rearranged or deleted some of the information requested from Sponsors and reduced the number of Exhibits in the application. FHEO reviews the following exhibits:

- Sec. 202 - 1, 3(a), 3(b), 3(c), 3(e), 4(a), 4(c), 8 and 12.
- Sec. 811 - 1, 3(a), 3(b), 3(d), 3(e), 3(f), 3(h), 4(a), 4(e), 8 and 12.

3

3. Revised Standard Rating Criteria

Section 202: The Factors for the Standard Rating Criteria are: Sponsor's ability to develop and operate the proposed housing on a long-term basis (52 points); need for supportive housing for persons and the suitability of the site, (28 points); and the adequacy of supportive services (20 points). The maximum number of points an application can earn without bonus points is 100. An application can earn an additional 10 bonus points for a maximum total of 110 points.

Section 811: The Factors for the Standard Rating Criteria have been reduced from three to two: Sponsor's ability to develop and operate the proposed housing on a long-term basis (57 points), need for supportive housing for persons with disabilities in the area to be served, the extent to which the Sponsor has site control and the suitability of the site, (43 points). The maximum number of points an application can earn without bonus points is 100. An application can earn an additional 25 bonus points for a maximum total of 125 points.

4. FHEO Rated Factors Reduced From Three (3) to Two (2)-, but FHEO Points Remain at Twenty (20)

FHEO continues to rate applicants on previous experience in serving/housing minorities and the extent to which the housing site promotes a greater choice of housing opportunities for elderly minority persons and minority persons with disabilities. The number of points awarded by FHEO remains at last year's total of twenty (20) points, a maximum of ten (10) points for each factor.

5. Sponsor's Experience in Providing Opportunities for Minority and Women-owned Businesses Deleted as Rated Factor

Recognizing that the Sponsor's experience in providing opportunities for minority and women-owned businesses is not indicative of an applicant's ability to develop and operate the proposed program on a long-term basis, FHEO discontinued using this criterion as a rating factor. The points for this factor were reallocated to the category of the applicant's previous experience in serving or housing minorities. The Department, however, continues to require applicants to provide information on their contracting experience with minority and women-owned businesses. Sponsors must still describe their experience in contracting with minority- and women-owned businesses over the last three years; as well as their experience in contracting with small businesses. In addition, they must provide information about their participation in joint ventures by

4

describing the joint venture, the partners involved and the Sponsor's involvement. The Department establishes Minority Business Enterprise (MBE) goals. (These goals do not affect the rating of Section 202 or Section 811 applications.) A minority Sponsor is one in which more than 50 percent of the board members are minority (i.e., African- American, Hispanic, Native American, or Asian-Pacific).

6. Use of Term "Minority Persons" Refers to Elderly and Persons with Disabilities

With the combining of the Section 202/811 Programs in this Guidance, the term "minority persons" as used throughout this guidance refers to elderly minority persons as used for the Section 202 Program, and minority persons with disabilities, as used for the Section 811 Program.

7. Bonus Points (5) for Sponsor's Involvement of Elderly (Section 202 Program) and Persons with Disabilities (Section 811), Including Minorities..... To Be Rated by Multifamily Housing

The Sponsor's involvement of elderly and persons with disabilities, including minority elderly and minority persons with disabilities in the implementation of the

project, is to be rated by Multifamily Housing instead of FHEO.

APPLICATION PRESUBMISSION

Field Offices no longer publish an Invitation for Applications. Instead, the Notice of Fund Availability (NOFA) published by Headquarters in the Federal Register will serve as the invitation. Field Offices must still notify media which service elderly persons and minorities/persons with disabilities, all persons and organizations on their mailing lists, minority and other organizations involved in housing and community development within their jurisdiction, and groups with a special interest in housing for the elderly and persons with disabilities. FHEO shall assist in this endeavor by providing the names and addresses of the minority media, minority organizations and fair housing groups/organizations to Housing's Processing Control and Reports staff.

FHEO also participates in the Field Office's Section 811 and Section 202 Workshops and pre-workshops by presenting information to all potential sponsors on the equal opportunity requirements of the program and the type of information required in the applications. Additionally, FHEO staff should remind all workshop attendees of the need to fully and clearly articulate: (1) their experience in providing housing and services to minorities; and (2) how the proposed site will promote greater housing opportunities for minority persons.

5

DEFINITIONS

Minority: A racial or ethnic group, members of which have been subjected to prejudice or cultural bias by virtue of belonging to the group, without regard to individual qualities. Such groups include, but are not limited to:

- (1) African Americans. Persons having origins in any of the African racial groups of Africa.
- (2) Hispanic Americans. All persons of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean and other Spanish or Portuguese culture or origin.
- (3) Native Americans. Persons having origins in any of the original peoples of North America or the Hawaiian Islands, in particular, American Indians, Eskimos, Aleuts and Native Hawaiians.
- (4) Asian-Pacific Americans. Persons having origins in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust

Territories of the Pacific, Northern
Marianas, Laos, Cambodia, Taiwan and India.

Disability: With respect to an individual, is a physical or mental impairment that substantially limits one or more of the major life activities of such individual. The term "person with disabilities" shall include:

- (1) A person who has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. 6001(5)], i.e., if he or she has a severe chronic disability which:
 - (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - (ii) Is manifested before the person attains age twenty-two;
 - (iii) Is likely to continue indefinitely;
 - (iv) Results in substantial functional limitation in three or more of the following areas of major life activity:
 - (A) Self-care;
 - (B) Receptive and expressive language;
 - (C) Learning;
 - (D) Mobility;
 - (E) Self-direction;
 - (F) Capacity for independent living;
 - (G) Economic self-sufficiency; and
 - (v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned or coordinated;
- (2) A person with a chronic mental illness, i.e., a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and which impairment could be improved by more suitable housing conditions.
- (3) A person with the human acquired immunodeficiency virus, alcohol or drug addiction, as defined 42 U.S.C. 8013(k)(2).

(Adapted from 24 CFR Section 891.305)

Elderly: A person who is 62 years of age or older.

Minority neighborhood: A neighborhood in which any one of the following statistical conditions exists:

- (1) The percentage of persons of a particular racial or ethnic minority is at least 20 points higher than that minority's percentage in the housing market as a whole;
- (2) The neighborhood's total percentage of minority persons is at least 20 points higher than the total percentage of minorities for the housing market area as a whole; or
- (3) In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population.

Housing Market Area: That geographic region from which it is likely that renters/purchasers would be drawn for a given multifamily housing project. A housing market area most often corresponds to a Metropolitan Statistical Area (MSA).

7

APPLICATION PROCESSING

The selection process has been simplified to include only Initial Screening and Technical Processing. During Initial Screening, applications will be reviewed to determine if all parts are included. The Department will not review the contents of the application at this time. At the end of Initial Screening, "Acknowledgment Letters" will be sent to Sponsors informing them that the applications are acceptable for Technical Processing, or "Deficiency Letters" will be sent informing sponsors of any missing parts of the application. Sponsors must correct deficiencies within 8 calendar days from the date of the deficiency letter.

TECHNICAL PROCESSING

During Technical Processing, applications will undergo a complete analysis by appropriate disciplines within HUD. As part of this analysis, FHEO staff evaluates the application by answering the questions listed on TECHNICAL PROCESSING REVIEW AND FINDINGS MEMORANDUM - FAIR HOUSING AND EQUAL OPPORTUNITY listed in Notice H-96-53. The instructions provided below are intended to be used in conjunction with the Memorandum.

QUESTION 1:

Based on the application submission, even without a site visit, does the proposed site meet Site and Neighborhood Standards?

EXHIBIT(S):

Exhibits 4 (a) and 4 (e) for the Sec. 811 Program and Exhibits 4 (a) and 4 (c) for the Sec. 202 Program on site location and racial composition of the neighborhood with map data. OTHER DATA SOURCES:

Census Tract and mapping data used for community and fair housing planning; a personal visit to the site.

EVALUATION:

Even without a site visit, FHEO can determine that the proposed site meets Site and Neighborhood Standards requirements, including minority and disabled concentration considerations.

FHEO staff utilize data in the Exhibits on the location of the site and the racial composition of the neighborhood to determine whether the site meets the civil rights portion of HUD's Site and Neighborhood Standards. The following section is an adaptation of the language found in the regulations at 24 CFR 891.125(b)&(c).

8

- a. AU sites and neighborhoods must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, Section 504 of the Rehabilitation Act of 1973, and implementing HUD regulations.
- b. New construction sites must not be located in an area of minority concentration (except as permitted in paragraph "c." below), and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- C. New construction projects may be located in an area of minority concentration only if:
 - (1) sufficient, comparable opportunities exist for housing minority persons with disabilities, in the income range to be served by the proposed project, outside areas of minority concentration.
 - (a) In determining whether there are "sufficient" housing opportunities for minorities outside areas of minority concentration, the term "sufficient" does not require an equal number of assisted units within and outside of areas of minority concentration in every locality. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities

within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very low income minority persons with disabilities and in relation to the racial mix of the locality's population.

- (b) Units may be considered "comparable opportunities" if they have the same household type (households with persons with disabilities) and tenure type (owner/renter); require approximately the same total tenant payment; serve the same income group; are located in the same housing market; and are in standard condition.

9

- (c) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD's assisted housing on the availability of housing choices for very low income minority persons with disabilities in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:

- 1 A significant number of assisted housing units are available outside areas of minority concentration.
- 2 There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.
- 3 There are racially integrated neighborhoods in the locality.
- 4 Programs are operated by the locality to assist minority persons with disabilities who wish to find housing outside areas of minority concentration.
- 5 Households with minority persons with disabilities have benefited from local activities (e.g., acquisition and writedown of sites, tax relief programs for homeowners, acquisition of units for use as assisted housing units) undertaken to expand choice for minority families outside areas of minority concentration.
- 6 A significant proportion of minority persons with disabilities has been successful in finding units in non-minority areas under the

Section 8 Certificate and Housing Voucher programs.

- 7 Comparable housing opportunities have been made available outside areas of minority concentration through other programs.
- (2) the project is necessary to meet overriding housing needs which cannot be met in that housing market area.
- (a) A determination of overriding need may be made if:
- 1 The site is an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood; or
 - 2 The site is located in a neighborhood experiencing significant private investment which is demonstrably changing the economic character of the area (a "revitalizing area").
- (b) However, an overriding need may not serve as the basis for determining that a site is acceptable if:
- 1 Discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable; or
 - 2 The use of this standard in recent years has had the effect of circumventing the Department's obligation to provide housing choice.

10

QUESTION 2:

Is the sponsor in compliance with civil rights laws and regulations?

EXHIBIT(S):

Exhibit 12, Part 1. Certification in connection with the Development and Operation of a Section 811 and/or Section 202 Supportive Housing for Elderly and/or Persons with Disabilities Project.

OTHER DATA SOURCES:

FHEO shall make the above determination with assistance from the FHEO Compliance Division. The FHEO Compliance Division will advise if the sponsor is in compliance based upon compliance/monitoring/audit findings, complaint determinations.

EVALUATION:

If the Sponsor is in compliance, and if there is no evidence to the contrary (i.e., compliance/monitoring/audit findings, complaint determinations), FHEO can accept the certification. If a Sponsor is not in compliance with one of the civil rights laws and/or implementing regulations, the certification cannot be accepted.

The Sponsor is in compliance with civil rights laws and regulations, as follows:

- a. There is no pending civil rights suit against the Sponsor instituted by the Department of Justice;

11

- b. There is no outstanding finding of non-compliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, unless the Sponsor is operating under a Reapproved compliance agreement designed to correct the area(s) of noncompliance;
- c. There is no unresolved Secretarial charge of discrimination issued under Section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400;
- d. There has not been an adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the Sponsor is operating in compliance with a court order designed to correct the area(s) of noncompliance; and,
- e. There has not been a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), or the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 and the HUD Section 504 Regulations (24 CFR 8.57).

QUESTION 3:

Are the sponsor's certifications acceptable in connection with compliance with civil rights laws, regulations, executive orders, and equal opportunity requirements?

EXHIBIT(S):

Exhibit 12, Part 1. Certification in connection with the Development and Operation of a Section 811 and/or Section 202 Supportive Housing for Elderly and/or Persons with Disabilities Project.

OTHER SOURCES OF DATA:

This is a- statement of Sponsor's intent to comply with

civil rights laws and should be included with the application.

12

EVALUATION:

This question differs from Question 2, which considers the Sponsor's past history with respect to civil rights laws. This requests a certification of Sponsor's intent to comply with civil rights laws. FHEO reviews to determine if the Sponsor's certification is acceptable based on its previous record as indicated in Question 2.

RATING FACTOR 1.

The scope, extent and quality of the Sponsor's experience in providing housing or related services to minority persons or families (10 points).

EXHIBIT(S): Exhibit 3.

OTHER SOURCES OF DATA:

Information on Sponsor's previous experience may be available from the Asset Management staff or FHEO monitoring or compliance review activity.

EVALUATION:

FHEO CRITERIA FOR FACTOR 1

- 10 points Sponsor has significant previous experience in housing/serving minorities (i.e., previous housing assistance/related service to minorities was equal to or greater than the percentage of minorities in the jurisdiction where the previous housing/service experience occurred); and the Sponsor has ties to the minority community.
- 8-9 points Sponsor has significant previous experience in housing/serving minorities. There is no evidence that the Sponsor has ties to the minority community.
- 5-7 points Sponsor has minimal experience in housing/serving -minorities (i.e., previous housing assistance/related service to minorities was less than the percentage of minorities in the jurisdiction where the previous housing/related service experience occurred) and the Sponsor has ties to the minority community.
- 3-4 points Sponsor has minimal experience in housing/serving minorities but the Sponsor does not have ties to the minority community.
- 1-2 points The Sponsor does not have experience in

housing/serving minorities, but there is evidence that the Sponsor has ties to the minority community.

13

Experience in Providing Housing or Related Services

Sponsors must have experience in providing either housing or supportive services to the elderly, persons with disabilities, families or minority groups. FHEO's focus is on whether the housing or related services that were provided by the Sponsor were directed toward minorities.

FHEO utilizes data contained in the Exhibits in the application for an overall picture of the Sponsor's previous housing and/or services experience. Where the Sponsor has HUD housing experience, FHEO should consider information provided by Multifamily Housing staff in connection with the Sponsor's previous participation certificate review.

If the Sponsor has no previous housing experience, it is particularly important for FHEO staff to examine all data and all relevant experience reported in the application. Nonprofit organizations with little or no housing experience should have an opportunity (based upon their service experience) to compete successfully with larger organizations with significant housing experience. This is particularly true if the Sponsor is a minority organization or if the Sponsor is new to the program and proposes a project that will serve minority elderly and minority persons with disabilities.

In evaluating a Sponsor's experience in serving minorities, FHEO should consider:

- a. The variety of services and facilities provided;
- b. The description of persons, by race and ethnicity, served by the activities; and, if available,
- c. Information from residents in the community regarding the quality of the activities.

Examples of activities that should be examined include: housing counseling, nutrition and food services, special housing referral, screening and information projects.

Review of Sponsor's Ties to the Minority Community

As part of its analysis of Sponsor experience, FHEO reviews the narrative statement in Exhibit 3 to determine the extent of the Sponsor's ties to the minority community. FHEO's review includes any documentation submitted by the Sponsor, such as letters from minority community leaders, heads of organizations, etc.

14

Sponsor's supportive services may not be a condition for occupancy

FHEO staff may review some applications that propose to restrict occupancy to persons having similar disabilities, i.e., subcategories of the three major disability categories of physically disabled, developmentally disabled or chronically mentally W. With the approval of the Secretary, a sponsor may restrict occupancy to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. However, no qualified individual, regardless of disability will be denied housing if the individual can benefit from the housing and/or the services provided. The sponsor must assure that (1) the residents will receive supportive services based on their individual needs, and that (2) applicants will not be required to accept supportive services as a condition of occupancy.

RATING FACTOR 2:

Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority persons (10 points)

EXHIBIT(S): Exhibit 4.

OTHER SOURCES OF DATA:

Information is available from the Consolidated Plan; census reports and community and fair housing planning mapping systems; monitoring or compliance review reports; FHEO and Housing Asset Management's files and HUD's in-house tracking data system for Section 8 Applications and Contracts - Multifamily Tenant Characteristics System (MTCS).

15

EVALUATION:

Desirability of the Location

FHEO reviews the proposed site from the standpoint of promoting a greater choice of housing opportunities for minority persons. This differs from Question 1 where FHEO evaluated the proposed site from the standpoint of compliance with the Site and Neighborhood Standards threshold requirement.

In determining whether a site promotes housing choice for minority elderly and minority persons with disabilities, FHEO staff must consider the existence of other assisted housing for minority elderly and minority persons with disabilities (including Section 202, other Section 811 and low rent public housing projects) and the locations) of such housing. Using information contained in the Exhibits, FHEO staff would have already determined whether a minority concentrated area has an unmet need for housing for minority elderly and minority persons

with disabilities (see "3" above); FHEO staff now determines whether the proposed housing addresses that need. Depending upon local circumstances, a favor-able site can be one that is:

- a. Located in a non-minority neighborhood, where there is no existing assisted housing for minority elderly and minority persons with disabilities in the housing market area or the existing assisted housing for minority elderly and minority persons with disabilities is located in a minority concentrated area;
- b. Located in a racially mixed neighborhood, where there is no existing assisted housing for the minority elderly and minority persons with disabilities in the housing market area or the existing assisted housing for the minority elderly and minority persons with disabilities is located in a minority concentrated area;
- c. Located in a minority concentrated area, where there is existing assisted housing for the minority elderly and minority persons with disabilities but there is still an identified need for such housing in that community; or,
- d. Located in a minority concentrated area with a need for assisted housing for minority elderly and minority persons with disabilities, where the existing assisted housing for minority elderly and minority persons with disabilities is located outside the minority concentrated area.

However, if a site does not affect housing choice (i.e., the site is located in an area where minority elderly and minority persons with disabilities can select from housing opportunities both within and outside minority concentrated areas), the points under Factor 2 should not be awarded.

16

The FHEO Rating Criterion for Factor 2 awards points considering the existence and location of existing housing for minority persons and whether a minority concentrated area has an unmet need for such housing in determining whether a site promotes housing choice.

Situation #1 - Housing market area where there is no existing assisted housing for elderly (including Section 202, low rent public housing and other assisted housing projects). There is a need for such housing both inside and outside areas of minority concentration.

10 points The site is located in a racially mixed area with a need for such housing.

8 points The site is located in a nonminority area with a need for such housing.

5 points The site is located in a minority concentrated area with a need for such housing. The

Sponsor has comparable, rental units outside of the minority concentrated area that will be available to elderly minority persons through vacancies and/or turnover thus providing a housing choice to those elderly minority persons who live outside the minority community.

3 points The site is located in a minority concentrated area with a need for housing. Sponsor does not have comparable rental units outside of the minority concentrated area.

0 points None of the above. The site, although acceptable, does not promote a greater choice of housing opportunities for minority elderly persons.

Situation #2 - Housing market area where there is existing assisted housing for the minority elderly (including Section 202, low rent public housing and other assisted housing projects for minority elderly persons) and such housing is located in a nonminority area. There is an unmet need to house minority elderly and minority elderly persons in a minority concentrated area:

10 points The site is located in a minority concentrated area with an unmet housing need for elderly and/or minority elderly or minority persons with disabilities.

17

8 points The site is located in a racially mixed area bordering the minority concentrated area with an unmet need for housing minority elderly or minority persons with disabilities.

5 points The site is located in a nonminority area but Sponsor has comparable, rental units in the minority concentrated area that will be available to minority elderly or minority persons with disabilities through vacancies and/or turnover, thus providing a housing choice to minority elderly or minority persons with disabilities who desire to remain in the minority community.

0 points None of the above. The site, although acceptable, does not promote a greater choice of housing opportunities for minority elderly or minority persons with disabilities.

Situation #.3 - Housing market area where the existing

housing for minority elderly or minority persons with disabilities is located in an area of minority concentration. There is still a housing need in the minority concentrated area, as well as in the community as a whole:

- 10 points The site is located in a racially mixed area.
- 8 points The site is located in a nonminority area.
- 5 points The site is located in a minority area but Sponsor has comparable, rental units outside of the minority concentrated area that will be available to minority elderly or minority persons with disabilities (through vacancies and/or turnover), thus providing a housing choice to minority elderly or minority persons with disabilities who live outside the minority community.
- 0 points None of the above. The site, although acceptable, does not promote a greater choice of housing opportunities for minority elderly or minority persons with disabilities.

Situation #4 - Housing market area where few or no minorities live. (There are no or few areas of minority concentration.)

- 10 points The site is located in a housing market area with a population of only a few minorities.

18

- 5 points The site is located in a housing market area with a population of no minorities.

Situation #5 - Housing market area where existing assisted housing for the minority elderly and minority persons with disabilities is inside a minority concentrated area and also outside a minority concentrated area. Both areas have an unmet need for housing for minorities.

- 10 points The site is located Outside and the majority of assisted housing is located inside.
- 10 points The site is located Inside and the majority of assisted housing is located outside.
- 5 points The site is located Outside and the majority of assisted housing is located

outside.

5 points The site is located Inside and the majority of assisted housing is located inside.

Situation #6 - Housing market area where few or no nonminorities live. (There are no or few areas of nonminority concentration.)

10 points The site is located in a housing market area with a population of only a few nonminorities.

5 points The site is located in a housing market area with a population of no nonminorities.

ADDITIONAL FINDINGS:

To answer the questions below, a "YES" or "NO" response is required.

1. Does the project address a low participation rate and an identified need for housing for very low income minority persons?

Refer to Rating Factor 2.

2. Based upon data submitted in Exhibit 3(b), does the Sponsor indicate ties to the minority community?

Refer to Rating Factor 1.

1 9

3. Is the Sponsor's project consistent with the affirmatively furthering fair housing provisions of the jurisdiction's Consolidated Plan Certification?

Refer to Exhibit I 1, Certification of Consistency with the Consolidated Plan. FHEO indicates whether the Sponsor's project is consistent with the affirmatively furthering fair housing provisions of the jurisdiction's Consolidated Plan certification. Such projects are those that promote a greater choice of housing opportunities for minority persons.

4. For projects with relocation indicated, is the information submitted in Exhibit 8 acceptable?

If displacement/relocation is indicated, FHEO staff shall review Exhibit 8 to determine whether the Sponsor has submitted the required racial and ethnic data on the persons/businesses to be displaced and whether the Sponsor's relocation advisory procedures promote a greater choice of housing opportunities for minority persons/households.

Where displacement of minority persons is involved, services

must include steps to ensure that such persons have a reasonable opportunity to relocate to decent, safe, and sanitary replacement dwellings that are within their financial means, in a full range of neighborhoods, including those which are outside areas of minority concentration.

If the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, be given opportunities to relocate to replacement dwellings not located in such areas. Additionally, where relocation occurs, FHEO should assess the merits of the Relocation Plan in assigning points to Factor 2.

Note that Community Planning and Development (CPD) completes the relocation plan review.

5. Has the Sponsor submitted the required racial and ethnic data on the persons/businesses to be displaced?

Refer to Exhibit 8.

COMPLETION OF FHEO REVIEW

After its review, FHEO staff prepare the Technical Processing Review and Findings Memorandum to document findings as to FHEO's recommended rating and the acceptability or non-acceptability of each application. The review sheets are forwarded to the Multifamily Housing Representative through the Processing Control and Reports (PC&R) Staff.

2 0

The MHR reconciles any conflicting review comments by obtaining agreements from affected offices or by referring the matter to the Multifamily Housing Director for a decision. The manner of resolving conflicting comments must be documented and retained with the appropriate review sheets. (FHEO comments are not affected by this process because FHEO is the only discipline recommending points for Factors I and 2.)

The MHR will also prepare technical rejection letters based upon the reviews of each technical discipline. No application rejected during Technical Processing can be rated or considered by the Rating Panel unless, based upon the Sponsor's appeal, the application is reinstated.

SELECTION PROCESS

The Multifamily Housing Director convenes a rating panel comprised of the MHR and staff from other technical disciplines, including FHEO. The Panel evaluates all approvable applications on the basis of their merits relative to those of other approvable applications and determines those to be selected for funding.

As part of the Field Office panel, the FHEO representative reviews the list of applications identified for selection and

provides advice and guidance to panel members regarding those that will best meet the fair housing and equal opportunity objectives. Because there are usually far more applications than can be funded, FHEO's role on the panel is essential.

Where multiple disciplines review the same selection factor, final points are determined by averaging the points awarded by individual disciplines. (See Standard Rating Criteria Form.) Once final points are assigned, the applications (along with appropriate justification data) are rated and ranked.

Field Office recommendations for selections of the Section 811 and Section 202 applications (with the appropriate justification data) are then forwarded to the Headquarters Office of Elderly and Assisted Housing, for final selections as approved by the Assistant Secretary for Housing.

Affirmative Fair Housing Marketing Plans

FHEO does not review the Affirmative Fair Housing Marketing Plan P), HUD Form 935.2, until the Sponsor is selected for funding. The AFHMP will be requested at a later stage of processing.

If FHEO reviews the AFHMP and FHEO finds it to be deficient, FHEO may indicate such but the application is not rejected on this basis during Technical Processing. There is time to work with the Sponsor to resolve problems or to obtain necessary modifications to the AFHMP.

21

FHEO staff should follow the guidance contained in HUD's Affirmative Fair Housing Marketing Handbook, 8025.1 REV-2.

Outreach To Persons With Disabilities

24 CFR 8.6 of the Section 504 regulation requires recipients to take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public who are disabled. Since the Section 811 Program is targeted for persons with disabilities, Sponsors should be aware of methods to specifically reach this population group. Therefore, in addition to utilizing newspapers and radio stations, Sponsors may also use qualified sign language and oral interpreters, readers or taped and Braille materials, and should inform those organizations which serve persons with disabilities in the community, in order to reach persons with all types of disabilities, such as visual and hearing impairments or those who are developmentally disabled with minimal reading skills, or persons who are confined to their homes. Sponsors are not required to submit their outreach procedures to HUD for approval (as is the case for the Affirmative Fair Housing Marketing Plan); however, documentation of the outreach efforts should be maintained on site in the rental office and available for HUD inspection.

We hope this guidance will assist FHEO field staff in their

review of Section 811 and 202 applications. For additional information, please contact William D. Gregorie, Acting Director, Office of Program Operations and Standards (202 708-0288) or your Program Coordinator at 202 708-2288.

Susan M. Forward
Deputy Assistant Secretary for
Enforcement and Investigations